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Business and Labor Committee  
January 31, 2011

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[LB113 LB288 LB386 LB416 LB472 LB530 LB640]

The Committee on Business and Labor met at 1:30 p.m. on Monday, January 31, 2011, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB113, LB288, LB386, LB416, LB472, LB530, and LB640. Senators present: Steve Lathrop, Chairperson; Tanya Cook, Vice Chairperson; Brad Ashford; Tom Carlson; and Norm Wallman. Senators absent: Burke Harr, and Jim Smith.

SENATOR LATHROP: I want to tell you a little bit about...for those of you that haven't been here before, we use a light system and the process is we'll have a senator introduce the bill, followed by the proponents, and then the opponents, those testifying in the neutral capacity, then the senator will be given an opportunity to close. Today is a little unique because of two things. First, we have seven bills and, secondly, we have a storm coming our way, okay, and we have people who are here to testify and senators who need to get home and I'd like to be out of here by 4:00, okay? In order to make that happen, I want to give everybody a chance to be heard and everybody a chance to have their bill given the consideration that's due, but to make sure that that happens I'm going to ask you to do a couple things. First, we have the light system here in place. That does not apply to the senator that introduces the bill or closes on the bill, but it does apply to testifiers. When you sit down you'll get a green light, that yellow light will come on after two minutes, and you should appreciate that when the red light comes on at three minutes I'd like you to stop, okay? And today, normally we kind of are a little understanding and we make a little leeway for that, today we need to strictly enforce it because of the number of bills and giving people who have to travel back to Omaha and Sarpy County an opportunity to do that ahead of the storm that's headed our way. Okay? We will start today, and I should introduce those here. Senator Carlson is here on the committee from Holdrege. We have Molly Burton, who's legal counsel. My name is Steve Lathrop. Kate Wolfe is our legislative assistant or, pardon me,...

KATE WOLFE: Committee clerk.

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SENATOR LATHROP: ...our committee clerk. And Tanya Cook is here from Omaha, and Norm Wallman from Cortland. So with that, we are going to start with the first bill. One other thing I'll ask you to do, I appreciate that you're here because this means a lot to you, these particular bills do. We'll ask you not to duplicate somebody. I don't need three people coming up and saying the same thing. And you're always welcome to submit testimony if you'd like to do that, okay, or just come up and say, I agree with the last guy. And with that, we'll start with Senator Cornett and LB640. Welcome, Senator Cornett.

SENATOR CORNETT: Thank you, Chairman Lathrop and members of the Business and Labor Committee. I almost said Revenue Committee. Sorry. (Laugh) [LB640]

SENATOR LATHROP: We're Business and Labor. [LB640]

SENATOR CORNETT: I actually remember that. [LB640]

SENATOR LATHROP: All right. [LB640]

SENATOR CORNETT: Good afternoon, as I said. My name is Senator Abbie Cornett, C-o-r-n-e-t-t, and I represent the 45th Legislative District. I'm here today to introduce LB640. LB640 allows cities of the first class the ability to negotiate contracts with firefighters above what is negotiated in statute 16-1020 and 16-1042. The statute sets a floor for what is acceptable for firefighters' retirement. This bill will give the cities another tool to help retain firefighters by being able to negotiate more in regards to retirement benefits. There are several people here who can give you examples and answer your questions, but I'm going to give you a little bit of history where this came from. When I got elected seven years ago now, shortly thereafter the city of Bellevue had entered into a contract in regards to retirement with their police officers. After they had entered in the contract, they found out that they were in violation of the statutes listed for police. We

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introduced a bill at that time to allow the police or the cities to negotiate with their police, similar to this bill which is with their fire departments, for retirement benefits. I fully understand the opposition to this bill but I think that some of the opposition is going to be addressed in legislation you are looking at later this year. All the municipalities want the ability to negotiate with their firefighters and police officers, but they're also afraid that if they negotiate or their neighbors negotiate for a different retirement package that they're going to end up in a situation of comparables with the CIR. And I know that that is a concern for the League of Municipalities. No one is saying that a municipality shouldn't be able to negotiate their contracts, but the concern there is what happens if your neighbor negotiates a higher rate than you currently have. And in deference to that, I understand the concerns and I also know that the committee is working in issues in regards to the CIR. If you do not feel this bill is in a form or at this time able to pass out of committee, I would please request an interim study this summer based on the merits of the bill in allowing municipalities to determine their own futures and their own negotiations with their police and fire but at the same time fully understanding the issues with the CIR at this time. [LB640]

SENATOR LATHROP: Very good. Thank you, Senator Cornett. Any questions for Senator Cornett? Do you intend to stay? [LB640]

SENATOR CORNETT: I have to be in another committee so I am going to waive closing. [LB640]

SENATOR LATHROP: Okay. [LB640]

SENATOR CORNETT: But I do urge you to carefully consider this bill because it does have significant ramifications on both sides for our municipalities. [LB640]

SENATOR LATHROP: I can appreciate those. All right. [LB640]

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SENATOR CORNETT: Thank you. [LB640]

SENATOR LATHROP: Very good. Thank you, Senator Cornett. The first proponent, please. [LB640]

DAVE ENGLER: Good afternoon. My name is Dave Engler. I'm the president of the Nebraska Professional Fire Fighters Association. We support this and we'd like to thank Senator Cornett for introducing it for us. The bill itself does not have any requirements on the municipalities and so they're not mandated to do anything, but what we've run into in the past is we've had some situations in which some of the cities have experienced that they would like to improve their pension, their individual pension, to help compete with some of the other cities like Omaha, for instance, and make...keep the employees within that jurisdiction that train them and has employed them so they're not running off and to other fire departments and then they're losing that experience. So all this would do is it would be a tool for the municipality to make that determination on their own whether they want to or not. Currently, and you'll receive a letter from our attorney, currently we're of the belief, we have a legal opinion that says that we believe that it can be done by state statute, but there is a debate as to whether that's the case or not. [LB640]

SENATOR LATHROP: You believe you can do it currently without a change of the statute but the clarification. [LB640]

DAVE ENGLER: Currently, currently our attorney believes that,... [LB640]

SENATOR LATHROP: Okay. [LB640]

DAVE ENGLER: ...but that belief is not shared by everybody. So what we're trying to do is just clean up the language and I believe he's going to submit a letter that explains his position to you. [LB640]

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SENATOR LATHROP: Would that be John Corrigan? [LB640]

DAVE ENGLER: It would be, sir. [LB640]

SENATOR LATHROP: Okay. And I'll let the...as long as you bring it up, I'll let the record reflect that we do have a letter from Dowd Howard and Corrigan, signed by John Corrigan, dated January 31, 2011, in support of LB640. (Exhibit 1) That will be entered into the record. [LB640]

DAVE ENGLER: Very good. So just in summary, we are in favor of it and, again, this is not a mandate on anyone. It is just a tool that municipalities can use to help compete with some of those other fire departments that have different pension plans. [LB640]

SENATOR LATHROP: Very good. [LB640]

DAVE ENGLER: Thank you. [LB640]

SENATOR LATHROP: Any questions for Mr. Engler? Senator Carlson. [LB640]

SENATOR CARLSON: Thank you, Senator Lathrop. Do you have access to the bill in front of you? [LB640]

DAVE ENGLER: Yeah. Oh, no, I don't. [LB640]

SENATOR CARLSON: Okay. I'm going to read something to you out of...off page 3, section (5): Nothing in sections so and so shall prohibit a city of the first class from engaging in negotiations with. That's the way it reads. [LB640]

DAVE ENGLER: Uh-huh. [LB640]

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SENATOR CARLSON: What's the difference between it reading that way or reading this way: Nothing in sections so and so shall prohibit a city of the first class from engaging in negotiations with, nor does anything require a city of the first class to engage in negotiation with its firefighters? [LB640]

DAVE ENGLER: Well, there is a state law that says you can collectively bargain. What we're talking...and so currently, they can negotiate contracts. The only thing is that there's a state pension plan for firefighters and what this does is it allows them to negotiate something above what the state plan has. [LB640]

SENATOR CARLSON: Well, I get nervous looking into law and the words "shall" and "may." Is this a "may" or is it a "shall"? It's worded it's a "shall." [LB640]

DAVE ENGLER: Right. [LB640]

SENATOR CARLSON: But it's worded in such a way that it almost sounds like "may." [LB640]

DAVE ENGLER: Right. [LB640]

SENATOR CARLSON: So is it...it's an option... [LB640]

DAVE ENGLER: It is an option. [LB640]

SENATOR CARLSON: ...and it's an option for the city as well, correct? [LB640]

DAVE ENGLER: Right. [LB640]

SENATOR CARLSON: Okay. Okay. Thank you. [LB640]

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SENATOR LATHROP: The short answer or the long and the short of it is, if this passed, the city wouldn't be obliged to improve the pension, wouldn't be obliged to do anything with the pension, but it's just permissive. [LB640]

DAVE ENGLER: Right. [LB640]

SENATOR LATHROP: Okay. That's your intent in any case. [LB640]

DAVE ENGLER: Yes. [LB640]

SENATOR LATHROP: All right. Thank you, Mr. Engler. [LB640]

DAVE ENGLER: Thank you. [LB640]

SENATOR LATHROP: Anyone else here as a proponent? Is anyone here in opposition to LB640? Afternoon, Mike. [LB640]

MICHAEL NOLAN: (Exhibits 2 and 3) Senator. Senator Lathrop, members of the committee, my name is Michael Nolan, N-o-l-a-n. I'm here at the request of the city of Norfolk. I actually work for the League of Nebraska Municipalities. I'm the executive director of the league association of risk management and I am registered as a lobbyist. I don't lobby very often but I'm here today at the request of the city of Norfolk. I'm distributing their letter, requesting that I give you testimony, and I'm distributing to you a handout as well that will basically tell you more information than you want to know about why we have defined contribution pension plans and explaining why the defined benefit plan in the early 1980s created the context for the transition to defined contribution plans. That top sheet will give you the summary. In the 1981 column were all of the unfunded liabilities that occurred in 1981. Those are converted in the second column to net present value in 2011. All of the attachments are from a series of stories that The

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Norfolk Daily News ran on the pension problems that occurred in the 1980s. Those won, by the way, an Associated Press award and they were the pretext for us going to a defined contribution system. And almost every single one of those plans now is entirely funded. There are...there may be a few that have a few amortization, principal and interest years left on them, but I think they're all pretty much funded. So the pension system for police and firefighters in cities of the first class is financially sound now, largely because we went to this kind of concept. I'd answer any questions if you have any. Don't want to take a bunch of the time. I do really appreciate that Senator Cornett said that she'd like to have an interim study on this. I'd encourage you to study it because it's really a fascinating issue and a complicated one. [LB640]

SENATOR LATHROP: I'm beginning to appreciate that over the last six months, the issues relating to labor and the cities in our great state, and I don't understand or I didn't...I appreciate your concern for historically the problems with pensions for police, firefighters and city employees. What's your opposition to LB640? [LB640]

MICHAEL NOLAN: I think that just from my perspective the issue of local option was decided in 1984 and the more you got into it what you realized, that the opposition to the defined benefit was not due in some instances to the cost but mostly to the unpredictability of being able to actuarially calculate how that... [LB640]

SENATOR LATHROP: And that was the defined benefit problem though. [LB640]

MICHAEL NOLAN: That was the defined benefit plan and I think there's a great deal of reluctance on any kind of basis to go back to that because we've been there, done that. What it essentially ended up doing, I mean we had some cities who thought they were funded correctly and were not and we had some as in the case of Norfolk. I was there going through my first budget and noticed that the account in the fire department's budget went from about \$25,000 to about \$46,000 and I said this is very curious, and discovered that the city, despite the fact that my predecessor and the mayor and city



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council had been incumbents in those positions when the Legislature approved the statute authorizing those pensions, were totally clueless about what the implication of a defined benefit pension plan was. They had no concept at all that they were unfunded. There was \$1,200,000 almost of unfunded fire pension liability. [LB640]

SENATOR LATHROP: Mike, can I ask you a question? [LB640]

MICHAEL NOLAN: Sure. [LB640]

SENATOR LATHROP: If the only increase the city would negotiate under this LB640 is additional contributions to a defined contribution plan, do you have an objection with that? [LB640]

MICHAEL NOLAN: I think... [LB640]

SENATOR LATHROP: In other words, is your fear that this will be used as a vehicle to go back to defined benefits? [LB640]

MICHAEL NOLAN: I'm certainly not in a position to say that Norfolk would have any objection to negotiating anything. That wasn't my purpose here. [LB640]

SENATOR LATHROP: Okay. [LB640]

MICHAEL NOLAN: But I will tell you that the issue, I think, in the vast majority of cities is a willingness to negotiate a defined contribution plan with, in a principal way, looking what additional amounts could be done to improve that plan because of its significant value of predictability and actuarial soundness. [LB640]

SENATOR LATHROP: Right. I appreciate the difference between the two and I don't think this committee is interested in going back to a defined benefit plan when that's not

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what we have for first-class cities. Okay. [LB640]

MICHAEL NOLAN: Thank you. And I'll be glad to participate in your interim study, Senator. [LB640]

SENATOR LATHROP: Okay. Thanks, I appreciate that. [LB640]

MICHAEL NOLAN: Thank you. [LB640]

SENATOR LATHROP: Any other questions? All right, thanks, Mike. [LB640]

LYNN REX: (Exhibit 4) Senator Lathrop, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. And if a page would come forward please. I do appreciate the opportunity to appear today. We had a number of cities that wanted to be here and, because of weather, were unable to, and what you're having here is a handout that involves letters from Fremont, Columbus, Hastings, Scottsbluff, and others. There are 30 cities of the first class, 9 paid fire departments. Mike Nolan and I are the only ones that are still around that were negotiating in 1982-83 to change from a defined benefit plan to a defined contribution plan effective January 1, 1984. And at that time, both the firefighters and the police officers, we all worked together to get this done and, in large part, what was happening is, as Mike noted, there were cities that didn't have funding, there were cities that thought they were fully funded, found out they weren't. And make a long story short, there were firefighters and police officers that understood, because John DeCamp explained it to them as a state senator, that in fact defined benefit is simply a promise and the Legislature can change that promise prospectively. And so in looking at that, they wanted to have something that was theirs that in fact was going toward their retirement, and we went to a defined contribution plan. We do oppose this bill and we appreciate Senator Cornett's willingness to look at an interim study. We oppose it for several issues in several ways: number one, because of the option that this would allow

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for a defined benefit, we do not believe and the legal opinions that we have indicate that municipalities do not have...the first class do not have the authority to have defined benefit plans. I realize there's a lower court decision that just came out involving Bellevue that says contrary to that. We hope that that will be resolved on appeal. But clearly, the entire focus and the entire legislative history shows that the Legislature absolutely did not want defined benefit for cities of the first class and made this transition. Secondly, in answer to your question, Senator Lathrop, we would also oppose unilaterally cities having the option to increase and enhance defined contribution plans because of CIR implications. As you know, CIR cannot deal with pensions as a contract, but the way that it works, and I talked to Bill Harding, who's unable to be here today because he was down in Florida but will be coming back shortly, but the reality is even if one city would make...enhance a defined contribution plan, basically the CIR would not direct the next city to change their defined contribution plan. What they would do is have the city make it up in wages. So therein lies the issue. And we do appreciate your willingness to look at this. We feel that we are always willing to sit down and talk. In fact, Senator Lathrop, I know that you're aware of this, some of you may not be, that we had a negotiated agreement with police officers of the first-class cities to enhance their defined contribution plan; we couldn't get it out of Retirement Committee. It's the first time in my over 30 years I haven't been able to get a bill out that's got a negotiated agreement. So for whatever reason, that bill did not come out of the Retirement Committee but both was strongly supported by police officers and firefighters, department firefighters, and the league. And we, frankly, thought that this year, you know, the police came to us, we met with them, they thought it was not appropriate to introduce that bill this year because of the issues, financial, that cities are facing. So we respectfully oppose LB640 and look forward to working with you on the interim study. [LB640]

SENATOR LATHROP: All right. Are there any questions for Ms. Rex? The record will reflect, since you brought this handouts, letters from the city of Columbus, dated January 31, 2011; from the city of Fremont, dated January 31, 2011; from the city of

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Hastings, dated January 31, 2011, all of which are in opposition to LB640. And I will also add that Mr. Nolan brought with him a letter from Norfolk, dated January 31, 2011, also in opposition to LB640 and they'll be entered in the record and we appreciate your testimony and coming here today. [LB640]

LYNN REX: Okay. Thank you very much. And I don't know, Senator Lathrop, if you'd be willing to leave the record open because I know that the mayor of Bellevue would like to get a record in opposition and a couple others who had planned on coming but couldn't because of weather, now will transfer their testimony into letters. [LB640]

SENATOR LATHROP: I think if you can...if you want to drop those off, to the extent that I'm able, I'll make them part of the record, Lynn. [LB640]

LYNN REX: Okay. Thank you. Really appreciate that. [LB640]

SENATOR LATHROP: I've never had anybody make that request, so... [LB640]

LYNN REX: Okay. Thank you very much. I appreciate it. [LB640]

SENATOR LATHROP: All right. You're very welcome. [LB640]

DON WESELY: Senator Lathrop, members of the Business and Labor Committee, my name is Don Wesely, a registered lobbyist on the behalf of the city of Hastings. You have a letter from the city of Hastings. I won't add further to it other than note that if you look at that letter, at the bottom of the letter it says, "The Legislature got it right in 1984, let's leave it alone." I was the Chair of the Retirement Committee in 1984 and that's the first time anybody said I was right about anything. I'd just like to make that a part of the record. Thank you very much. [LB640]

SENATOR LATHROP: That's why you came down here? [LB640]

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DON WESELY: Yeah. (Laughter) [LB640]

SENATOR LATHROP: Thank you for your testimony. [LB640]

DON WESELY: Thank you. [LB640]

SENATOR LATHROP: And I don't think there's any questions, Don. Is anyone else here in opposition? [LB640]

DAN HOINS: Thank you, Senator Lathrop, members of the committee. My name is Dan Hoins, H-o-i-n-s. I'm the city administrator for the city of Papillion, appearing on behalf of the city of Papillion opposing LB640. I brought stacks of research that would indicate that defined benefits are not the proper thing for a state or a city to pursue. My primary concern with this legislation is that this opens the door for defined benefit contributions. And if even just 1 city does it, there are 30 other first-class cities across the state that are going to be subjected potentially to that particular 1 city's actions, I think. While we appreciate local control, I think the state does have an interest. Historically, I've been the city administrator for ten years, negotiated a couple different contracts with police unions, fire unions. We've had a mutual understanding that we could not pursue a defined benefit, in fact that it was prohibited by state statute to do so. Until the most recent hearing in Bellevue, I think we were in agreement on that. Primary concern is that LB640, in its current form, will open that negotiation up to a defined benefit, and that's our biggest concern, Senator. [LB640]

SENATOR LATHROP: Very good. I think I...believe me, I'm starting to understand this a lot better than I did a year ago and I appreciate the concerns that you've expressed about both concerns. Any questions? [LB640]

DAN HOINS: Thank you. [LB640]

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SENATOR LATHROP: I see none. Thank you. [LB640]

JAY VAVRICEK: Good afternoon, Senator Lathrop, members of the committee. My name is Jay Vavricek and that's spelled J-a-y V-a-v-r-i-c-e-k, representing the people of Grand Island as I proudly serve as mayor. And also with me today we have Human Resources Director Brenda Sutherland and Finance Director Mary Lou Brown. And just for the deference of the committee and leadership, would obviously appreciate any questions if they answer those during my time. I'll be happy to allow that, with your agreement. Also like to acknowledge the leadership of Senator Cornett and her recommendation to make this an interim recommendation to be looked at. And I say that in that I've been in office about 50 days. I'm a mayor revisited after a four-year absence, so I've been on the sideline but also now back in service to the people of Grand Island. And I thought to myself when I took office, boy, am I glad that I'm not the mayor in Omaha and experiencing some of the same challenges that that community is experiencing. And yet, when I happened to go ahead and look at the account of a Omaha World-Herald story not too long ago, the same financial challenges that Omaha has been facing are the ones that the people of Grand Island, the city of Grand Island is facing today. So while we've been financially sound and well-managed, I just know that the threats to potential decisions are very profound because, indeed, the similarities are just like many other cities of the first class--property tax, revenues are flat, sales tax erosion has occurred, you can go on and on and on, inability to manage your work force, and the impact of potential CIR rulings and the laws of comparability. But there's one thing that was different and currently is different in Grand Island than what has been embraced by the people of Omaha in that Grand Island is not saddled with the situation that had to be dealt with, with its firefighters and police pension fund, because we have a defined contribution plan that was enacted, as your leadership indicated, well back in 1984. I think Brenda Sutherland said we have one individual still on the plan from pre-1983, so the impact is not there for unfunded liability. And when I go down the road of our city, knowing that we're cash-strapped, we're trying to go ahead and fend off

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and fend for revenue sources, we're also trying to meet our obligations and not cut services and not hopefully increase taxes, obviously the liability of what would be determined under interim study has tremendous concern and why the city of Grand Island opposes this enactment. So with that, I would just point out the big difference but very much appreciate your leadership and the interim study recommendation going forward, because the impact is this, when we get back to comparability, is the benefits of how that triggers our array of cities, some of which have those benefits, some which does not, is ultimately the main concern as we look at this and being able to stretch a dollar. [LB640]

SENATOR LATHROP: Okay. I think I get it, Mayor. [LB640]

JAY VAVRICEK: Thank you. [LB640]

SENATOR LATHROP: And I appreciate your comments. Are there any questions?  
Senator Carlson. [LB640]

SENATOR CARLSON: Thank you, Senator Lathrop. And we are in a time bind today so I'll just take this opportunity to thank you and the people of Grand Island for a wonderful job on the State Fair and congratulate you on it. [LB640]

JAY VAVRICEK: Well, thank you. It's our pleasure and we look forward to continuing that proud tradition in so many ways. [LB640]

SENATOR LATHROP: I should have been there with Senator Carlson since I'm not on the Ag Committee. (Laughter) I appreciate what you guys are doing with the State Fair. You're a great job. [LB640]

JAY VAVRICEK: And there's plenty of love that's available for all concerned. Thank you.  
[LB640]

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SENATOR LATHROP: I'm certainly enjoying my service on that committee. Okay.  
Thank you, Mayor. [LB640]

JAY VAVRICEK: Thank you very much. [LB640]

SENATOR LATHROP: And I appreciate your coming out today. Anyone else here in  
opposition? [LB640]

NEAL NIEDFELDT: (Exhibit 5) Good afternoon. My name is Neal Niedfeldt, last name is spelled N-i-e-d-f-e-l-d-t. I'm the city administrator for the city of Beatrice and rather than...and I have a letter that I will hand out for the committee to review, and rather than for me to read through the whole thing, because I think you get the gist of what the concerns are, I would like to, one, point out that the city of Beatrice currently administers four different union contracts. We negotiate a contract for the firefighters, the police union, Nebraska Association of Public Employees, and the IBEW. And when we combine those contracts, we're serving over 110 employees. As a fairness issue to all of our employees, we work very diligently to offer similar benefits to each of them and all four of our contracts will be renewed in 2011. If LB640 would pass, it may add pressure to negotiate what we think are unnecessary changes to the pension plans and it would...in fairness to our other employees working under our other three agreements, we may have to consider changes to their pension benefits as well. So this does have a domino effect, not just on firefighters and firefighters between municipalities, but it can affect all the different union groups that we work with. So in summary, LB640 would only lead to increase investment risk, as we've mentioned before, for the municipal employer. It will cause higher administrative costs, will not significantly improve the pension benefits that our workers ultimately receive, could cause some additional comparability problems with our counterparts, and create fairness issues between our city employees. So for those reasons, we would oppose the passage of LB640. Thank you. [LB640]



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SENATOR LATHROP: Okay. [LB640]

NEAL NIEDFELDT: Okay. [LB640]

SENATOR LATHROP: Are there any questions for Mr. Niedfeldt? I'm...oh, I'm sorry, Senator Wallman. [LB640]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Mr. Niedfeldt, thanks for coming down. [LB640]

NEAL NIEDFELDT: Yeah, you're welcome. Glad to be here. [LB640]

SENATOR WALLMAN: How were the roads, pretty good? [LB640]

NEAL NIEDFELDT: Not too good. Hopefully will be okay going back. [LB640]

SENATOR WALLMAN: So now it looks, by this sheet, your funds are in good shape, huh? [LB640]

NEAL NIEDFELDT: Well, we run a defined contribution plan like the other cities do, and with that there are no unfunded liabilities that we have to worry about so the risk is not there at the moment. [LB640]

SENATOR WALLMAN: Yeah. Thank you. [LB640]

NEAL NIEDFELDT: Okay. [LB640]

SENATOR LATHROP: Very good. I neglected to mention this, but if you testify we need to have you fill out one of these sheets, if you would. That was like one of the few things

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I really must say at the beginning of a hearing and I neglected to share that with you. So before you leave, kindly fill a sheet out and let us know so we can get an accurate record who was here in support and opposition. Welcome. [LB640]

JOE MANGIAMELLI: (Exhibit 6) Senator Lathrop and members of the committee, thank you for this opportunity. I guess when you get to be one of the last ones, everything you wanted to say has already been said. So I'm Joe Mangiamelli from Columbus, M-a-n-g-i-a-m-e-l-l-i. I'm the city administrator. And the clerk is passing out a letter of opposition from Columbus. [LB640]

SENATOR LATHROP: Very good. [LB640]

JOE MANGIAMELLI: Thank you. [LB640]

SENATOR LATHROP: I appreciate that, Mr. Mangiamelli. Any questions? I see none. Thank you. Is anyone else here in opposition to LB640 who cares to be heard? Anyone here in a neutral capacity? Seeing none, that will close our hearing on LB640. I think the record reflects the letters that have been offered in support and in opposition, and they'll be made part of the record. We'll next go to LB416 and that brings us to Senator Wallman. [LB640]

SENATOR WALLMAN: Good afternoon, Chairman Lathrop and members of the Business Committee and Labor. For the record, my name is Norm Wallman, W-a-l-l-m-a-n, and I represent District 30 which covers all of Gage County, southern Lancaster County, and a small portion of Lincoln. I'm here today to introduce LB416. This bill basically makes three changes to Nebraska Revised Statute 35-302. First change, requirement for paid firefighters to remain on duty an aggregate of 60 hours per week in a month, to aggregate of 60 hours per week in a calendar year. The second change deals with the inability of a fire chief or their subordinate to fill in for a firefighter. In 2009, an amendment was adopted into LB537. I believe it inadvertently tied the

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hands of fire chiefs or their immediate subordinates to cover when they had a staffing shortage. No one wants to see fire chiefs and their immediate subordinates routinely fill in for firefighters, but sometimes the need comes up and the statute, as it is currently written, does not allow for that. So the third change deals with overtime and it makes exceptions to when a firefighter is off duty and when they can be required to work. We have two opposing groups working together and I definitely love my firefighters and will try to find a compromise on this bill. If they can work out an agreement, I would be more than happy to draft an amendment to this bill. I am hopeful an agreement can be reached. Thank you, Chairman. [LB416]

SENATOR LATHROP: Thank you, Senator Wallman. We appreciate you coming here to introduce LB416. Does the committee have any questions for Senator Wallman? I don't see any. [LB416]

SENATOR WALLMAN: Thank you. [LB416]

SENATOR LATHROP: Do you want to close, Senator Wallman? [LB416]

SENATOR WALLMAN: Waive. [LB416]

SENATOR LATHROP: You'll waive closing. Okay. Then we will begin with proponents of LB416. Welcome, Chief. [LB416]

BILL BOWES: Good afternoon, Senator Lathrop, members of the committee. Thank you for allowing me to visit with you this afternoon. My name is Bill Bowes, B-o-w-e-s. I am the fire chief in Papillion and I'm representing the Municipal Fire Chiefs' Association in Nebraska. Our municipal fire chiefs largely deal with departments that have paid members. That's where the primary focus is. I'd like to thank Senator Wallman for introducing this bill on our behalf. Along with the support of the league, I think we can make some very positive changes to this legislation. Give you a brief background of the

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bill: Back in 2008, South Sioux City was looking to hire some firefighters to supplement their volunteer corps, primarily to work during the daytime when volunteers had a hard time responding. The people from South Sioux worked with the state Professional Fire Fighters Association, with the league to draft some language and solve their problem, and everybody seemed satisfied with that. The original bill introduced in 2009 met everybody's approval, worked out great, and then somewhere in the process an amendment was introduced that highlighted one of the points that Senator Wallman made on prohibiting a fire chief or an immediate subordinate not assigned to work a 24-hour shift, to fill a spot of the firefighter working a 24-hour shift, in short, not allowing me to fill in for one of my members, for whatever reason. I don't have any desire to fill in for my members at any particular time, but if the need is there I would like to be able to do that. You'll hear some testimony following me, giving you some specific instances in that case. So we believe that's a management issue that I should be able to assign whoever needs to work, to work, whether that be myself, my deputy chief or somebody else not working a 24-hour shift. So that's probably the first and main issue that we have. Then the other two issues are tied together in the 60-hour aggregate work week part in the bill, in the first couple of sentences, along with the ability as a fire chief using what we believe are management rights to call people in to work, generally for purposes of training. Right now state law allows us to call in somebody to work only in cases of emergencies, which is broadly defined and very general. What we would like to see is a further definition of that to allow us to bring in people on overtime on their day off for scheduled training, that's the largest issue we run into, which then ties back to the 60-hour maximum in a work week. If we are able to extend that 60-hour period out from a month to a year, we can get the necessary trainings in that we need to, utilizing off-duty time but with overtime pay. [LB416]

SENATOR LATHROP: Okay. I think I get it. [LB416]

BILL BOWES: Thank you. [LB416]

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SENATOR LATHROP: Any questions for the chief? I see none. Thanks for coming down. [LB416]

BILL BOWES: Thank you very much. [LB416]

SENATOR LATHROP: We appreciate it. We hope you can get back to Papillion safely today. [LB416]

BILL BOWES: Well, we plan on it. Thanks. [LB416]

SENATOR LATHROP: Yeah, good. Any other proponents? [LB416]

PAUL PEDERSEN: (Exhibit 7) Senators, appreciate your allowing us to testify here today and Bill said it pretty well. I do have... [LB416]

SENATOR LATHROP: Can we have your name and have you spell your last... [LB416]

PAUL PEDERSEN: Paul Pedersen, P-e-d-e-r-s-e-n. [LB416]

SENATOR LATHROP: And you must be a chief with somebody's fire department. [LB416]

PAUL PEDERSEN: I'm chief of the fire department in North Platte. [LB416]

SENATOR LATHROP: Okay, very good. Welcome. [LB416]

PAUL PEDERSEN: I would just like to expand a little bit on the training issue. When we work these, we work firefighters on 24-hour shifts, if we have outside agencies such as Nebraska Emergency Management Agency or someone like that coming in to present a course, such as hazardous materials technician course, that's a two-week course. They

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present it once over a 40-hour week and if we can't have mandatory training to cover that then we're...we have always stragglers, people that don't pick up that training, and it's an effort for us. We have to find where the course is being delivered again and send people out and we can't even really...under the current provision in state law they can voluntarily go out but we can't mandate that they go to that training. So other than that, that's all I wanted to... [LB416]

SENATOR LATHROP: Very good. We appreciate you coming all the way from North Platte, Chief,... [LB416]

PAUL PEDERSEN: Thank you. [LB416]

SENATOR LATHROP: ...and your thoughts on the matter. Are there any questions? I see none. [LB416]

PAUL PEDERSEN: Thank you. [LB416]

SENATOR LATHROP: Thank you once again. [LB416]

TROY HUGHES: Senator Lathrop, members of the committee, Troy Hughes. I'm the fire chief in Grand Island, Nebraska. I'll echo the same thoughts on training and other things, but I'd also like to thank you for your support to bring the State Fair to Grand Island. It's a great venue for us but it does create additional challenges that this law, the way it is written, affects us. When we bring 310,000 visitors into Grand Island, it requires us to have more staff available for the firefighting service, our emergency medical service, and other things. And the way the particular 35-302 is written, the only reason that we can require firefighters to stay on duty is for extraordinary conflagration. And I'm sure that additional staff for the State Fair would qualify under the way it's written and so we support the expansion of reasons that we can bring firefighters on duty and schedule them. Obviously, meeting the terms of the contract, fair labor standards, overtime, all

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that would be applied, but we would support an expansion of the reasoning for having additional staff. [LB416]

SENATOR LATHROP: And what would the reason...how would you describe the reason that your...the State Fair kind of a reason? If we had a list of reasons why they could do this, what additional reason would you use? [LB416]

TROY HUGHES: Well, additional reasons would be for additional medical support staff, additional firefighting staff to support events like the tractor pull and other things that require our staff, and now we have to depend on voluntary compliance and can't require that to get it covered. [LB416]

SENATOR LATHROP: So it would be community events? [LB416]

TROY HUGHES: Community events, an increase in call volume. We have the same staff as we had back in 2000 and our call volume has gone from about 3,100 calls to 4,800 calls in that same time period. So having the ability to manage that staff with the fire chief we think is very important to continuing to keep our budget low and still provide services that we need to our community. [LB416]

SENATOR LATHROP: So if we included community events with anticipated increase in calls, in call counts? [LB416]

TROY HUGHES: Yes. Yes. [LB416]

SENATOR LATHROP: Okay. All right. We appreciate your perspective because that's not something we might have thought of without having you come down here and testifying, so we appreciate it. [LB416]

TROY HUGHES: Appreciate the time. [LB416]

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SENATOR LATHROP: And good job with the State Fair. [LB416]

TROY HUGHES: Well, we're very happy to have it and really appreciate your support to bring it to Grand Island. We think it's the right place. [LB416]

SENATOR LATHROP: Sure. [LB416]

LYNN REX: Senator Lathrop, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We are also here in strong support of LB416. I think that the fire chiefs have outlined why this bill is necessary. I think providing more flexibility in terms of what they can do as a manager for their department is critically important when you're looking at the critical services that are provided by a fire department. And again, this would not be without pay. This is with overtime. I think some of the other elements that they've raised here, too, just in terms of allowing the fire chief to work if necessary, is also appropriate. I'd be happy to respond to any questions you might have. [LB416]

SENATOR LATHROP: I see none. Thanks, Lynn. [LB416]

LYNN REX: Thanks, Lynn. [LB416]

SENATOR LATHROP: Anyone else here in support of LB416. [LB416]

NEIL NIEDFELDT: (Exhibit 8) My name is Neal Niedfeldt, last name spelled N-i-e-d-f-e-l-d-t, city administrator for the city of Beatrice. I'd like to thank Senator Wallman for introducing this bill. We totally support it. In Beatrice, we make an awful lot of transports between Lincoln and Beatrice hospitals and our staff is limited as well. And with the current statutes in place, our fire chief or his immediate assistant cannot help out with some of those transports. So again, it comes down like it's been mentioned



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before. We think that our management staff ought to be allowed to perform certain duties and we can eliminate some overtime, save some costs for the taxpayers. [LB416]

SENATOR LATHROP: Very good. Any questions? I see none. Anyone else here in support of LB416? Anyone here in opposition to LB416? And just by a show of hands, while Mr. Engler comes up here, is there anyone else here that intends to testify in opposition or in a neutral capacity on this bill? I'm just trying to do kind of the traffic cop thing here for the bills. Okay. Welcome again. [LB416]

DAVE ENGLER: Well, thank you. Again, I'm Dave Engler, president of the Nebraska Professional Fire Fighters. Instead of bringing everyone from every city we represent up here, I'm going to ahead and take care of all of them. Originally, this language in state law was created because firefighters were working 72 hours a week and, under the state law, it created a three-shift system in the state of Nebraska so firefighters could actually have a life. Two years ago, Senator Giese approached us and wanted some compromise language to help the city of South Sioux out. Hesitantly, we did it and now I'm really hesitant to do it. But anyway, all the testimony you've heard, the previous language didn't allow for any of this anyway, so two years ago this change just said it a different way but it didn't change the way places could do business. So before, a fire chief could fill in for a firefighter. That didn't change. Before, you couldn't require someone to come in for training without discussing it first and creating an agreement. That didn't change. So we're not seeing any changes. We're just seeing language change that allowed firefighters to work a 40-hour week to help the city of South Sioux out with their response issues. This opens up the door for abuse and it is an invitation to open the door to working more than the statutory minimum. How do I know this? Because it's already happened with the law in place. This went to the Supreme Court in Columbus, where an injunction was filed because firefighters were told that they had to come to hazmat training or they were facing discipline. Now clearly, firefighters are human too and we have family obligations, we have things outside of work. We're already working a 53- to 56-hour work week as it is, and then to have an employer say,

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you have to be here or you're going to lose your job or you're going to be disciplined, is totally wrong. People can still...the fire chief can discuss it with the employees and they can still go to training, but there's probably got to be some notice and there's got to be some fairness in this decision. So I don't think the sky is falling here. We are clearly in opposition. We believe it will create just more abuses, abuses that already exist with the law in place. So we're opposed. [LB416]

SENATOR LATHROP: Just a few quick questions. [LB416]

DAVE ENGLER: Yes. [LB416]

SENATOR LATHROP: You represent the firefighters that serve cities with paid fire departments. Am I right? [LB416]

DAVE ENGLER: Right. Yes, sir. [LB416]

SENATOR LATHROP: And this circumstance wouldn't affect Omaha or Lincoln. Would that generally be true? [LB416]

DAVE ENGLER: These issues haven't come up necessarily in Omaha or Lincoln but... [LB416]

SENATOR LATHROP: In other words, the fire chiefs in Omaha and Lincoln aren't going to stand in for a paid firefighter. [LB416]

DAVE ENGLER: I don't believe that would ever happen. [LB416]

SENATOR LATHROP: So primarily we're talking about cities of the first class? [LB416]

DAVE ENGLER: Right. [LB416]

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SENATOR LATHROP: Otherwise, we're dealing, beyond cities in the first class, we're dealing with fully volunteer fire departments, are we not? [LB416]

DAVE ENGLER: Paid, paid and combination fire departments in the first class. [LB416]

SENATOR LATHROP: Okay. And how many of those fire departments do you represent today? [LB416]

DAVE ENGLER: Let's see... [LB416]

SENATOR LATHROP: And I shouldn't say fire departments, firefighters from departments across the state. [LB416]

DAVE ENGLER: Thirteen hundred, around thirteen hundred, but you'd have to minus Omaha and Lincoln. [LB416]

SENATOR LATHROP: And how many of those...how many cities is that? [LB416]

DAVE ENGLER: Cities? Fifteen. [LB416]

SENATOR LATHROP: Fifteen. Okay. [LB416]

DAVE ENGLER: Or actually 16. [LB416]

SENATOR LATHROP: I just want to make sure that we had an appreciation for how many cities... [LB416]

DAVE ENGLER: Right. [LB416]

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SENATOR LATHROP: ...your organization is involved in. Okay. Are there any other questions? [LB416]

DAVE ENGLER: Okay. Thank you. [LB416]

SENATOR LATHROP: I don't see any. Thanks, Dave. Was there anyone else here to testify in opposition to LB416? The record will reflect that I've received a letter from our friend and former Senator Bob Giese in opposition to LB416 and that will be made a part of the record as well for our hearing today. (Exhibit 9) And with that, anyone here in a neutral capacity? Seeing none and, Senator Wallman, do you wish to close or you waive close? Okay. Well, that will close our hearing then on LB416 and bring us to LB386 and Senator Heidemann. We might give these folks a second, if you don't mind, Senator, to...it will be easier for us to listen to you while...after the movement has taken place. [LB416]

SENATOR HEIDEMANN: I believe this is my first encounter with the Business and Labor Committee in my six years.

SENATOR LATHROP: Really.

SENATOR HEIDEMANN: And you always give the first bill clearance to go...

SENATOR CARLSON: What do you mean by encounter?

SENATOR HEIDEMANN: Encounter. (Laughter) I'm sure it will be a pleasant experience.

SENATOR LATHROP: And we are, I think, ready to go. Welcome.

SENATOR HEIDEMANN: (Exhibit 10) Thank you, Senator Lathrop, and members of the

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Business and Labor Committee. I am Senator Lavon Heidemann, spelled H-e-i-d-e-m-a-n-n, representing District 1 in the southeast corner of the state. I'm here today to introduce LB386. LB386 would connect the Nebraska college students with targeted industries by financially assisting companies willing to provide paid internships in an effort to retain these students in Nebraska upon graduation. The eligible companies would be able to apply to the Department of Economic Development for job training grants to assist in hiring interns, as long as the internship did not previously exist. The intern must be paid at least a federal minimum wage and work at least 200 hours in a 12-week period but not more than 1,000 hours in a 50-week period. Eligible companies are those that are category...eligible to apply for benefits as a tier 3 project under the Nebraska Advantage Act and would include businesses such as manufacturing, IT, and research and development companies. To be eligible, an intern would have to be a junior or senior in a four-year institution or in their second year at a community college. The job training grant may be up to the lesser of 40 percent of the cost of the internship or \$3,500. If in a distressed area, the grant may be up to 60 percent of the cost of internship, or \$5,000, whichever is less. A distressed area is defined as a municipality, county, incorporated area within a county, or a census tract that has an unemployment rate that exceeds the statewide average, has a per capita income below the statewide average, or had a population decrease between the two most recent censuses. Eligible companies cannot apply for more than two grants for the same intern and are not to be awarded more than five job training grants in any 12-month period. The department is to assure the equitable distribution of the grants in all geographic areas of the state to the extent that it's possible. For the fiscal years 2011-2012 and 2012-2013, the department may allocate no more than \$1.5 million for the Job Training Cash Fund for the internship program. Internships allow students to gain valuable, professional experience, showcase their skills, build their resumes, and network. But most importantly, research has shown that internships create lasting connections between students in the region. In one recent survey of the college graduates in Philadelphia area, 64 percent of the students who interned locally chose to stay in the region after graduating. Furthermore, pertaining to the nonnative segment,

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those who intern were twice as likely to remain after college than those who did not. The passage of LB386 would represent a significant step toward the goal of retaining more graduates in Nebraska. Nebraska's future rests with our young people. We must take advantage of the talent we have in our state and do everything that we can to prevent graduates from leaving Nebraska to pursue employment elsewhere. LB386 addresses this issue while also addressing the need for a skilled and experienced work force for businesses in Nebraska. I urge you to vote in favor for LB386. I am also offering an amendment, which I could pass out at this present time. This amendment is just a cleanup of definition of the word "intern." It clarifies that a person attending a community college must have completed one-half of the total hours required for an associate's degree to be eligible to be an intern, and that Nebraska residents attending college in another state must also be a junior or a senior. If you have any questions, I'd be happy to try to answer them. There are people that are following me that are probably more well versed with this, but I would be happy to try. [LB386]

SENATOR LATHROP: Okay. Senator Heidemann, I do have a...maybe we should...I'll make this note. You're introducing this at the request of the Governor. Am I right? [LB386]

SENATOR HEIDEMANN: Yes. [LB386]

SENATOR LATHROP: And it's sort of the anti-brain-drain bill. [LB386]

SENATOR HEIDEMANN: Yes. [LB386]

SENATOR LATHROP: The idea is that if we pass this bill and do these internships, that we're less likely to have college grads and community college graduates leave the state. [LB386]

SENATOR HEIDEMANN: They brought to me this late last year, let's say, and I was

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very interested from the start. It is our hope, and I agree with this, that once you get somebody to start working for a company, whether it be in Chadron or Elk Creek or Omaha, Nebraska, that those people will return, and it's been shown that they'll return to that area and hopefully work for that company but at least stay in that area. [LB386]

SENATOR LATHROP: Okay. And the one question I did have for you, Senator, is the \$1.5 million is coming out of the Job Training Fund,... [LB386]

SENATOR HEIDEMANN: ...and that's money that we would normally spend on working on skills for people who are working in different parts of the state in a different program. [LB386]

SENATOR HEIDEMANN: That money can be used for that purpose. [LB386]

SENATOR LATHROP: And how much is the total budget for that, if you know? In other words, does \$1.5 million represent half or all of it or...? [LB386]

SENATOR HEIDEMANN: I would have to look into that. It's not...it's way less than half, if I remember right. [LB386]

SENATOR LATHROP: Okay. Very good. [LB386]

SENATOR HEIDEMANN: And I'm sure there's some people following me up that would be able to tell you that. [LB386]

SENATOR LATHROP: I see the DED is shaking their head yes, so that's...I'm sure we'll hear soon. Senator Carlson. [LB386]

SENATOR CARLSON: Thank you, Senator Lathrop. I'm going to ask the question that he normally asks. Are you going to close? [LB386]

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SENATOR HEIDEMANN: I'm going to waive. We have some issues going on in Appropriations. I don't like to get too far. [LB386]

SENATOR CARLSON: Okay, then I'll ask you now. You're comfortable this has no fiscal impact on this year's budget. [LB386]

SENATOR HEIDEMANN: Because they're reallocating Job Training Cash Fund, there is no General Fund money with this. And I think it's a significant enough issue that I...and I understand there's going to be some people on this committee that are a little bit leery about taking some Job Training Cash Fund money, but when you look at what this can do, I think it's very well worth it. [LB386]

SENATOR CARLSON: Okay. Thank you. [LB386]

SENATOR LATHROP: Yeah, did you see the fiscal note, Lavon? It does suggest that they're going to need a halftime...half full-time employee or one-half of a full-time employee. Is that going to come out of the cash fund? Okay, someone else will answer that behind you I guess. [LB386]

SENATOR HEIDEMANN: It would probably be the hope that they'll be able to maybe absorb that. You can ask Richard, DED down the road and it's a possibility there would be that additional, but hopefully, looking at what they do, I've talked to Jeanne in the Fiscal Office that it's a possibility they would be able to do this within, without the... [LB386]

SENATOR LATHROP: So we got some work on the fiscal note. [LB386]

SENATOR HEIDEMANN: Well, there's been a discussion, put it that way. [LB386]



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SENATOR LATHROP: Okay. All right. Very good. Well, they're talking to the right guy. (Laughter) Thank you very much. I appreciate your introduction today. [LB386]

SENATOR HEIDEMANN: Thank you. It's been a pleasant experience. (Laughter) [LB386]

SENATOR LATHROP: Well, we aim to please. Good afternoon. [LB386]

RICHARD BAIER: (Exhibit \_\_\_\_ ) Good afternoon, Chairman Lathrop, members of the committee. For the record, my name is Richard Baier, the last name is spelled B-a-i-e-r. I'm the director for the Department of Economic Development here today to testify in support of LB386 and would like to share some background about why the Governor has made this one of his components of the Talent Innovation...Talent and Innovation Initiative. Now what I will tell you is Senator Heidemann did such a nice job that I scratched out about half of what I had to say, so I do appreciate that. I wanted to give you a little bit of background. As some of you know, we embarked upon an effort to do a statewide economic development strategic plan over the last about 18 months. We worked with a group called the Battelle Technology Partnership out of Ohio and they came back to look at a variety of activities in Nebraska, including our work with industries, an innovation road map, a review of some DED programs, as well as a population and a work force strategy. What I did want to share with you, and according to Battelle's findings, they found one really important finding that I think all of us need to really be cognizant of, and that's that addressing the availability of a high-skilled work force is perhaps the most crosscutting issue facing Nebraska's economic development efforts now and into the future. The lack of workers with high skills is among the leading business concerns of Nebraska's existing industry base across the state's industry clusters, and it will also impact ability to recruit new industries down the road. Senator Heidemann did a nice job outlining the various components of the legislation. I'd be happy to take questions when we are done if you have more about detail. What I will tell you, in terms of the funding question, currently there is about \$16 million in the Job

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Training Cash Fund. We do have some of that money committed on projects that haven't yet made a decision about where they're going to locate. So reality is the uncommitted, unappropriated funds is about \$11 million. We are also collecting interest on those funds and we would be using, as proposed anyway, some dollars to be able to help offset some of the staffing cost for this program. We had originally estimated it would take at least a halftime position just to process the paperwork. We believe the bill, as it's drafted now, would generate somewhere in the neighborhood to 500 to 700 net new internships in Nebraska on an annual basis. And it's really our effort to try and target and bring those kids here. Senator Heidemann did a nice job showcasing the results that have been out there. There's not really been anybody has done this on a statewide basis, so we're going to be the first in the country. So with that, I'd be happy to take specific questions. [LB386]

SENATOR LATHROP: That's a very, very interesting subject and I like it. Makes a lot of sense. [LB386]

RICHARD BAIER: We think it does. [LB386]

SENATOR LATHROP: This fund of money that we would be taking the \$1.5 million out of, how much does that...I appreciate that there's \$11 million unallocated. How much comes into that fund every year? [LB386]

RICHARD BAIER: There's no money that comes into it on an ongoing basis, just a General Fund appropriation periodically as the fund kind of winds down. As you might imagine, one of the things that sort of caught our attention when we started to look at how to fund this program was that we haven't had a great deal of new job creation projects over the last two years during the recession and so that it's allowed us really to kind of deal with this cash flow issue, support this project. And the other thing I will tell you is we're really committed to tracking the results of the young people that we want to work with and you're going to hear from some in a few minutes who...companies that do

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this on an ongoing basis and also some of our young people in Nebraska who have been interns and decided either stay here or to come back to Nebraska as a result of an internship. [LB386]

SENATOR LATHROP: And you expect to track the results? [LB386]

RICHARD BAIER: We will. [LB386]

SENATOR LATHROP: If we do these internships, you'll be able to come back in a few years... [LB386]

RICHARD BAIER: Yes. [LB386]

SENATOR LATHROP: ...and say most of them stayed in Nebraska. [LB386]

RICHARD BAIER: That will be our plan, is to work closely with Department of Labor to try and track them. [LB386]

SENATOR LATHROP: Good. Very good. [LB386]

RICHARD BAIER: It's not going to be, you know, we're not going to be perfect at it, but we're going to try real hard to be diligent about it. [LB386]

SENATOR LATHROP: Very good. All right. Senator Carlson has a question for you. [LB386]

SENATOR CARLSON: Thank you, Senator Lathrop. Richard, I think you said there's about \$16 million now but \$5 million of it must be allocated? [LB386]

RICHARD BAIER: Five million of it is committed to...what we call committed to projects,

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companies that are looking at where to locate right now. [LB386]

SENATOR CARLSON: Okay. How did it get to be \$16 million? [LB386]

RICHARD BAIER: The Legislature put, over the last several years, has put in \$25 million over the last six-year period into the fund. We also collect interest on an ongoing basis. And one of the other things that happens during the recession is we had a lot of companies who maybe had announced big projects. We said, look, we'll work with you under a job training contract. The recession hit. They scaled back their plans and maybe hired 15 or 20 instead of 200. And so those dollars really have been able to help us, put us in a position to be able to offer this kind of an incentive for the internship program. [LB386]

SENATOR CARLSON: Well, I appreciate that answer because, otherwise, you look at \$16 million, looks like a lot of money. [LB386]

RICHARD BAIER: Sure. [LB386]

SENATOR CARLSON: But that would look like it's serving the position of being an advantage right now. Otherwise, how do you come up with \$16 million... [LB386]

RICHARD BAIER: Right. [LB386]

SENATOR CARLSON: ...this year? [LB386]

RICHARD BAIER: Right. [LB386]

SENATOR CARLSON: So hopefully that would be a really good effort. [LB386]

RICHARD BAIER: Yeah. We're actually very blessed right now, Senator, with our job

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training program. It's one of the flexible programs that we're able to offer and we have dollars in it and it puts us in a position that a lot of other states are not in at this point. [LB386]

SENATOR CARLSON: Okay. [LB386]

SENATOR LATHROP: Very good. Thanks, Richard. [LB386]

RICHARD BAIER: Thank you. [LB386]

SENATOR LATHROP: Next proponent, please. [LB386]

RICK MEYER: (Exhibit 11) My name is Rick Meyer, spelled M-e-y-e-r. Good afternoon, Chairman Lathrop and members of the Business and Labor Committee. It is a pleasure to testify today on this very important piece of legislation and to encourage its passage. I represent Midwest Holding Incorporated and its wholly owned subsidiary, American Life and Security. We at Midwest applaud Senator Heidemann and Governor Heineman for their vision and passion in the areas of job creation and economic development but, even more, their desire to create the kinds of paths and methods to keep the young minds here in Nebraska. I came home to Nebraska after spending many successful years in Ohio and Kansas and founded Midwest Holding. I believed in Nebraska. I wanted to build a company that would create jobs and allow opportunities for young men and women to build careers right here at home here in Nebraska. My vision was to create good, corporate jobs, an environment to allow people to reach their full potential and to make a difference in their lives and in Nebraska. At Midwest Holding and American Life and Security we now have 18 full-time employees and 23 independent contractors. Eight of those full-time employees and seven of those contractors we have hired in the last six months and have plans to add an additional six to eight employees in the following six months. At Midwest, we are working to implement our own internship program to address the very issues that this bill identifies. I have attached a copy of our

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proposed program outline for you to view. The funding this bill creates will, I believe, encourage other companies to employ a similar program or will encourage those programs to expand upon any mentoring or internship programs that they may already have. Our director of human resources who is here today, Allison Fredericks, took on the job of creating a program that would be sustainable and that would give us a look at the real potentials of some of our future business leaders. A bright young man by the name of Jay Foreman was selected to lead our internship program. Jay played football for the University of Nebraska and enjoyed a very long, successful career in the National Football League. Allison and Jay share my vision of being a source of opportunity and being a part of Nebraska's future success. Please feel free to call on us if we can help in any way as this legislation moves forward. In closing, partnerships, such as this between the state of Nebraska and Nebraska's businesses, can only strengthen Nebraska's business climate and help ensure that there are opportunities here in Nebraska for our bright young minds. Allison, Jay, our management team, and myself, representing some 4,400 shareholders in every corner of every county of Nebraska, ask for your support of LB386. I would certainly offer myself for any questions you may have. [LB386]

SENATOR LATHROP: Very good. Senator Carlson. [LB386]

SENATOR CARLSON: Thank you, Senator Lathrop. Rick, you say in here that you're coming back home to Nebraska, so you were gone for however many years in Ohio and Kansas. Why did you come back? What brought you back? [LB386]

RICK MEYER: It's a great question, Senator Carlson. Being a part of Nebraska, growing up here, enjoying the Midwest, I, from the moment my career took me to Ohio, I planned and dreamed and found a way to build something to come back to Nebraska which is home. My family is here. My parents are still here and my family in Nebraska. And it's something about the blood in the University of Nebraska, the football team I've enjoyed. I did everything I could to get back here. [LB386]

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SENATOR CARLSON: Okay. Thank you. [LB386]

SENATOR LATHROP: I think it's great that you're growing a business during the recession too. I mean that's very impressive. And thanks for your testimony. [LB386]

RICK MEYER: You're welcome. [LB386]

SENATOR LATHROP: Appreciate it very much. [LB386]

RICK MEYER: Thank you, Senator Lathrop and the committee. [LB386]

SENATOR LATHROP: It's great to hear from the business community. Next proponent. Welcome. [LB386]

DENNIS HOUSTON: (Exhibit 12) Welcome. Chairman Lathrop and members of the Business and Labor Committee, my name is Dennis Houston, H-o-u-s-t-o-n. I'm the president and CEO of the Norfolk Area Chamber of Commerce. As you know, Norfolk is the proud home of our native son Senator Mike Flood, Speaker of the Nebraska Legislature. On behalf of the Norfolk Area Chamber of Commerce and its more than 600 member firms, the 15,000 area residents and jobs our members represent, and the 125,000 people in the Norfolk trade area, we urge your support of LB386, the Nebraska internship program. I would like to thank Governor Heineman, Senator Lavon Heidemann, and the Business and Labor Committee for bringing this important issue to the forefront. CNN and Money magazine recently designated Norfolk and Madison County as the second best place for jobs in America and Norfolk as one of the top 100 best places to live in America. We are very proud of those accolades but we certainly do not take them lightly. We strive each and every day to make them a reality. Just last week the Nebraska Department of Labor confirmed that our unemployment rate in Norfolk dropped once again to an amazing 3.1 percent. The Nebraska internship

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program will help our community carry this torch forward with the next generation. NAR, or Norfolk Area Recruiters, was founded in Norfolk six years ago and is a showcase project for the entire state. Its purpose is to reverse the brain drain as we bring our own back home to northeast Nebraska to succeed in their professional careers, their personal lives, and their opportunity for contribution to community. The Nebraska internship program would help us build on our already successful local initiatives, such as NAR. Many areas of Nebraska, especially rural communities, are experiencing brain drain as our recent college graduates leave Nebraska to experience life in other areas of the country, many times in larger, metropolitan areas. Under LB386, this program would certainly encourage college students to explore their future professional careers in rural communities in Nebraska. In the Norfolk area alone, we have financial service firms on main street, large industries and Fortune 500 companies who would certainly increase the size of their internship programs under LB386. Bringing new interns into rural Nebraska communities would create a strong foundation for a multiphase approach to an effective reverse of the depopulation challenge that faces many communities. This is just a first step. Our communities need to rally together to adopt these new interns as our own. We need to create a warm and welcoming place for them to live while they are in our communities. We need to educate them on what our communities have to offer. We need to introduce them to other young professionals so that they can have the important social network and human connections that we all need. We need to get them engaged in our communities and, most importantly, we need to make sure that they have a permanent job waiting for them on the day they graduate from college. If we do everything right, if we do all of the above, then I am most confident that, yes, we can reverse the depopulation in rural Nebraska and, yes, we can change the brain drain and the brain gain. The Nebraska internship program is not just about a summer job for college students. It's about building rural economic development success stories across Nebraska. It's about new job creation across Nebraska. New internships can and will turn into permanent new jobs for young Nebraskans. The Nebraska Legislature does not create jobs. Nebraska businesses create jobs. Having said that, legislative initiatives such as the Nebraska internship



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program do provide the Nebraska business community with the tools that we need to create the jobs of Nebraska's future. It is this public and private partnership that will lead to our future success. I would like to express our thanks to each of you for taking the lead on this important matter and for being our partner in success. The issue at hand is our ability to not only sustain but to succeed as we grow rural Nebraska job opportunities for young Nebraskans. Partnering together to collaborate on jobs creation is one of the most important initiatives we can focus on as a state. Thank you for your help to lead the charge in support of the Nebraska internship program. Thank you.  
[LB386]

SENATOR LATHROP: Very good. Thank you very much, Mr. Houston. Is that right?  
[LB386]

DENNIS HOUSTON: Yes. Uh-huh. [LB386]

SENATOR LATHROP: Yeah. Good to have Norfolk here and, of course, we appreciate your native son too. [LB386]

DENNIS HOUSTON: Sure. Certainly do. [LB386]

SENATOR LATHROP: Are there any questions? Senator Carlson. [LB386]

SENATOR CARLSON: Thank you, Senator Lathrop. Let's go back to NAR, and you've got six years' record on this and it was, as I understand, basically a recruiting plan initially, wasn't it? [LB386]

DENNIS HOUSTON: Correct. Uh-huh. [LB386]

SENATOR CARLSON: What have been the results over six years? [LB386]

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DENNIS HOUSTON: We currently have...we've had several success stories of families moving back. Oftentimes, it's younger families. It might be a single young professional. It might be a young married couple. It might be a young family. We have several dozen that are documented as coming back to the program. One challenge with the tracking process is everything is automated and it's on a Web site where we can partner these people with the organizations that have jobs. Oftentimes they go directly to the organizations and so, in some cases, those aren't trackable. So our numbers are actually higher. We currently have 48 families that would like to move back to northeast Nebraska if we had the right job opportunities for them at this time. [LB386]

SENATOR CARLSON: What was the plan itself? Was it developing a Web site or what was the initiative to begin with in order to start? [LB386]

DENNIS HOUSTON: Sure. Well, the idea, Senator, is totally volunteer driven, a group of community volunteers. Jay Knobbe, one of our local State Farm agents, headed up the project years ago with a number of other volunteers in Norfolk. And the process works, is that they reach out to area schools and work with them on their graduation list. They reach out to all students that went to school in northeast Nebraska. They track them. They keep that information updated and periodically we have mailings that go out to them informing them of new opportunities that might be out there. We just recently hired a new director for our convention and visitor's bureau in Norfolk and Madison County, and that person is someone who moved back from Denver, Colorado, as a result of a Norfolk Area Recruiter success story. So it's trying to reach out and track those people and bring them back home when the time is right for them to do so. [LB386]

SENATOR CARLSON: Well, there are several communities that are making an attempt to do something a little bit similar to what Norfolk has done. It would seem like LB386 would fit best into those communities that are already making some kind of an effort maybe. I think you've set the groundwork and hopefully... [LB386]

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DENNIS HOUSTON: I think it's a perfect partnership. [LB386]

SENATOR CARLSON: ...could really capitalize on this. [LB386]

DENNIS HOUSTON: I believe so. [LB386]

SENATOR CARLSON: Okay. Thank you. [LB386]

SENATOR LATHROP: Yeah. Thank you very much. [LB386]

DENNIS HOUSTON: Thank you. [LB386]

SENATOR LATHROP: Appreciate your testimony. [LB386]

DENNIS HOUSTON: Thanks. [LB386]

SENATOR LATHROP: Good afternoon. [LB386]

RAY AFRANK: Chairman Lathrop and committee members, my name is Ray A Frank, A-f-r-a-n-k. I'm the location manager at Agreliant Genetics at Battle Creek, Nebraska. As a company that has an intern program in place already, we are in favor of this bill. I think it can help us to add more interns. And we use the intern program as a training to work young people into a full-time position. I've hired two recently from last summer's intern program. We have a 50 percent hiring rate out of our intern program into full-time jobs, and the one young man that I've hired full-time will be coming to Nebraska from Purdue University. So there is an opportunity through these intern programs to bring people to Nebraska. Tell you that. Questions? [LB386]

SENATOR LATHROP: That's terrific to hear. How long have you been doing the

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internship program? [LB386]

RAY AFRANK: We've done interns for 13 years. The program we have in place now we've used for four years. We bring interns in and we give them a project for the summer. And just before school starts and they go back to college, they have to do a presentation at our corporate offices. [LB386]

SENATOR LATHROP: And that will afford you an opportunity to kind of look them over. [LB386]

RAY AFRANK: Yes, and it gives them an excellent opportunity to decide if it's really something they want to get into. [LB386]

SENATOR LATHROP: Terrific. That's a wonderful program and I'm sure this will help. Are there any other questions? I see none. Thank you, Mr. Afrank. [LB386]

RAY AFRANK: Thank you. [LB386]

ROBERT HALLSTROM: Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB386. We view LB386 as a positive economic development tool that will assist in keeping our graduating college students here at home to start their employment careers. LB386 will, on a much grander scale, replicate what the NBA has already attempted to do or is in the process of doing with the University of Nebraska at Lincoln and the University of Nebraska at Kearney with regard to internship programs set up with a number of different departments or divisions within these colleges or universities whether either the colleges themselves, the students, or the NBA match the students with member banks across the state for internships. We think the assistance that is provided in LB386 will provide even greater opportunities for not only our program but for other businesses across the state of Nebraska to enhance

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our economic development to keep those kids at home. Be happy to address any questions. [LB386]

SENATOR LATHROP: Very good. Thanks, Bob. Senator Carlson. [LB386]

SENATOR CARLSON: Thank you, Senator Lathrop. Bob, then in the experience of NBA on these interns, what percentage either end up being hired by the firm they've got the intern with or stay in Nebraska with another position? [LB386]

ROBERT HALLSTROM: I don't have those statistics, Senator, but I know there have been a number of success stories where they've come back and worked for one or two years and maybe while they're in school, and that they have then been hired back to be employed in those communities. [LB386]

SENATOR CARLSON: I'd appreciate if you could ask...try and figure out what that is,... [LB386]

ROBERT HALLSTROM: Will do. [LB386]

SENATOR CARLSON: ...because it has to be a number over a period of time and that might be some pretty significant information. [LB386]

ROBERT HALLSTROM: Yeah. I'll follow up on that. [LB386]

SENATOR CARLSON: Okay. Thank you. [LB386]

SENATOR LATHROP: Good. Thanks, Bob. [LB386]

ROBERT HALLSTROM: Thank you. [LB386]

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CALEB POLLARD: Greetings. My name is Caleb Pollard, it's spelled C-a-l-b (sic), last name is Pollard, P-o-l-l-a-r-d. I'm the executive director of Valley County economic development and the Ord Area Chamber of Commerce. I also represent my organization along with the Greater Omaha Chamber of Commerce and the Lincoln Chamber of Commerce, as well as the Nebraska Economic Developers Association. I'm here today to express my support for LB386, the Nebraska internship program. And for the record, I am a former intern in college, starting off as an intern for Senator Cap Dierks here in this very institution, and then moving that internship through my collegiate career to the Nebraska Department of Economic Development. I do believe very strongly that access to skilled, talented workers is going to be the battleground for the twenty-first century economy, and I want to bring that into clear view with something I find quite exciting but also troubling, is that over the course of the next 20 years we're going to see a seismic shift in work force dynamic in this country. And what I mean by that is, very specifically, 78 million baby boomers reaching retirement age. Simply put, we don't have enough workers to meet that demand over the course of the next 20 years. This effect in Nebraska is also exacerbated by population out-migration of young adults, specifically in Valley County, which is the county I hail from. We look at anywhere of a 10 to 15 to 16 percent out-migration rate over the course of the last 30 years. If you look at the dynamics of that change, while much of that comes from the consolidation of the small family farm, it also is due to the fact that the vast majority of our kids age 18 to 24 leave for postsecondary educational opportunities. Another layer to this that makes it very interesting is that recently as November of 2010 Valley County is now at prerecession levels of unemployment. So not only do we have an out-migration of talented individuals but we also have a compounded issue with our unemployment rate. So I have businesses that are willing to expand and hire, but the simple fact of the matter is that they cannot find talented workers. Now I do want to offer not only my support for this because of the impact that it can bring to rural communities, like Ord in Valley County. But also this is an issue that I experienced as an employee at the Greater Omaha Chamber of Commerce and as well as at the state, is that these are issues that continue to affect communities large and small. So with that in mind, I ask

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for your support of LB386. I think this is a good bill and I think that this can help both rural and urban communities address their work force issues. [LB386]

SENATOR LATHROP: Very good. [LB386]

CALEB POLLARD: Thank you. [LB386]

SENATOR LATHROP: Any questions for Mr. Pollard? I see none. [LB386]

CALEB POLLARD: Thank you. [LB386]

SENATOR LATHROP: Thanks for coming all the way out, sharing your thoughts. [LB386]

JOSEPH KNECHT: Afternoon,... [LB386]

SENATOR LATHROP: Good afternoon. [LB386]

JOSEPH KNECHT: ...Chairman Lathrop, committee. My names is Joseph Knecht, K-n-e-c-h-t. I'm here to represent really two firms, one i2rd, the other one Vipa Solutions, two very successful software enterprises here in the state of Nebraska, one a university spin-out. Reason for my talk here today is that I moved here from New York City, Queens, in 1999 to get my master's degree at the university. Every young man's dream out of New York is to get a job at Goldman Sachs in the mergers and acquisition division and grow in that company. Was here getting my master's degree and got an opportunity to get an internship with our parent company, i2rd, through a Kauffman program very similar to this program, which allowed me to buy into the company in 2000 and have consistently grown our firm here. We have over 24 FTEs here in the city of Lincoln, most of them highly technical--job engineers, software engineers--so a high-growth organization. In our company, about 50 percent of our people have been

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retained through internships and have grown with us. Overall, we keep about 30 percent of our interns that do work for us. Overall that now comprises about 50 percent of our company. If this was my board, my board always asks me to be brief and just talk about the numbers and get to the point, so I'll pretend you're my board. So I really look at this situation in, really, three critical areas. One is awareness. First is the youth not understanding that there are great opportunities here in the state of Nebraska and needing to get them engaged in companies so that they are aware of what's possible so that they can continue to grow here, and that's something we do a lot with our internship programs. Two is the retention factor. A program like this, the element that I really like is a lot of students will take an internship for a summer program only and sometimes that's hard for the student or the business to really understand how good of a talent that young person is. This allows that process to be longer so that the business owners and the youth are able to figure out is this the field I want to be in and are they a good fit to grow with the organization, very critical. And then growth, expansion here for the state of Nebraska in high technical fields, like our software, is critical in a couple of things. One, every business now is powered by technology and that's a growth industry pretty much in every state. And the second fact that you guys probably are well-aware of is companies like mine that operate in 20 cities all over the United States bring in a lot of money from outside of Nebraska. So it's new money to the state of Nebraska, which is always helpful in search, you know, in everything. So that's it. [LB386]

SENATOR LATHROP: Okay. That was just the numbers. [LB386]

JOSEPH KNECHT: Just numbers, numbers,... [LB386]

SENATOR LATHROP: Yeah, that's good. [LB386]

JOSEPH KNECHT: ...quick. [LB386]

SENATOR LATHROP: But it's helpful. [LB386]



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JOSEPH KNECHT: Yeah. [LB386]

SENATOR LATHROP: It's very helpful for us. Any questions? Senator Carlson. [LB386]

SENATOR CARLSON: Thank you, Senator Lathrop. I've got one important question:  
Can the Jets beat the Packers? (Laughter) [LB386]

JOSEPH KNECHT: Okay, now I'm a season ticket holder still of the New York Jets, still. My grandfather bought them when the Jets were founded, when it was at Ebbetts Field, then Shea Stadium, then the Meadowlands, then the New Meadowlands, and my entire life they have not done well. So it's (laughter)...my dad and mom were 22 years old when the Jets last won and they were married for three months when that happened. My dad was crying the other night when we lost, so it's very disappointing (laugh) but we're used to it. [LB386]

SENATOR CARLSON: Thank you. [LB386]

SENATOR LATHROP: Senator Carlson has a way of asking just the right question (laugh)... [LB386]

JOSEPH KNECHT: Very good. [LB386]

SENATOR LATHROP: ...and a good one at that. Any other questions? Seeing none, thanks for coming down. [LB386]

JOSEPH KNECHT: Thank you. [LB386]

SENATOR LATHROP: How many others wish to testify on this bill? Two? Okay. I just want to make sure we got the next...oh, three...next introducer up. Okay, welcome.

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[LB386]

DENNIS BAACK: Senator Lathrop and members of the Business and Labor Committee, my name is Dennis Baack. I'm the executive director of the Nebraska Community College Association here to testify on behalf of the community colleges. I have also been authorized to give the support from the University of Nebraska and also the State College System and also as the chair of the education committee for the state chamber to give you their support also. I think most of the things have already been said as to all of the good aspects of this. From the higher ed perspective, I think this just gives another opportunity for our students and I think it gives us another opportunity to have a very good partnership with business and industry, which I think is extremely important. And national data show that internships are very, very effective, both for the institutions, for the institution of higher education and for the businesses where these students go. So we are very supportive of this and would hope that you would advance it to the floor.

[LB386]

SENATOR LATHROP: Very good. Thanks, Dennis. Any questions? I see none. Appreciate your testimony. [LB386]

GARRY CLARK: Thank you, Chairman and committee. My name is Garry Clark, it's G-a-r-r-y C-l-a-r-k. I am from Cuming County economic development in West Point, Nebraska. I also represent Bancroft, Beemer, and Wisner. So my whole purpose for being here today is obviously as a supportive person for LB386 but also just to lend a person story myself. I'm originally from Washington, D.C. I attended Dana College, which recently closed last year, and also attended the University of Nebraska at Omaha for public administration, urban studies. During that time I was an intern for Nebraska Investment Finance Authority, maybe six years or so ago. During that period of time as an intern, which was my first introduction to the professional realm, it gave me an opportunity to find out what I needed to do to be professional, to find out what I needed to do to be an economic development specialist, and it also gave me an opportunity to

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realize that Nebraska had a little bit of the good life. So in terms of finding my way through the professional realm, I stayed in touch with those contacts and, in turn, eight months ago I found a position in Cuming County, and with the help of some of the people who brought me here in the first place, I was able to get a position here and brought my family back. So I am definitely in support of LB386 and also I represent, as I said before, the community of Cuming County. [LB386]

SENATOR LATHROP: You're a perfect example of why we ought to do this then. [LB386]

GARRY CLARK: Yes. Yes. [LB386]

SENATOR LATHROP: And brought somebody from Washington, D.C., to here. [LB386]

GARRY CLARK: Yes. Yes. [LB386]

SENATOR LATHROP: Good. We're glad you stayed. [LB386]

GARRY CLARK: Thank you. [LB386]

SENATOR LATHROP: Any questions for Mr. Clark? Yeah, Senator Carlson. [LB386]

SENATOR CARLSON: Thank you, Senator Lathrop. You've done a good job testifying. Have you testified in front of a committee before? [LB386]

GARRY CLARK: No, not yet. [LB386]

SENATOR CARLSON: Not here? [LB386]

GARRY CLARK: This is my first time actually. [LB386]

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SENATOR CARLSON: Well, come back again. You did a good job. [LB386]

GARRY CLARK: Well, thank you very much. [LB386]

\_\_\_\_\_: Are you not a Jets fan? Is that why (inaudible)? (Laughter) [LB386]

SENATOR LATHROP: Hey, wait a minute. Wait a minute. Stage is up here. We don't come to where you work and make fun of you. [LB386]

LYNN REX: Senator Lathrop, members of the committee my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We'd also just like to register our strong support of LB386. We think it will help stop the out-migration. We also think it's a great thing for students and for our educational institutions. Be happy to answer any questions. [LB386]

SENATOR LATHROP: Any questions for Lynn? Seeing none, thanks, Lynn. [LB386]

LYNN REX: Thank you. [LB386]

JUSTIN SOLOMON: Good afternoon. I am Justice Solomon. I am president of the student body at the University of Nebraska-Lincoln, as well as student regent for the UNL campus. I want to speak on behalf of the students in a little bit of a different light of the ability of this bill, LB386, to keep Nebraska students in Nebraska. I was born and raised in the great city of Omaha and, point blank, something I've learned by three years here at the university is we are hemorrhaging talent at every level. Far too often I have the opportunity to see my fellow students leave the state of Nebraska for jobs and opportunities elsewhere. Nebraska schools have the unique ability to prepare competitive, topnotch students for this global marketplace that we're all competing in, but for some reason we're still experiencing this brain drain crisis. And there's a reason

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why students choose not to stay in Nebraska. Every summer, Nebraska students, UNL students head to Kansas City, Denver, surrounding areas, the coasts as well, to compete for internships and it's not simply because the businesses are stronger or the opportunities are greater. It's because there are simply more positions available. The opportunities are there. And while I'm not an expert on economic development, I am a student that's seen firsthand and can tell you from firsthand experience that one of the main reasons the students leave is the lack of internships here in Nebraska. There are more internships in other states, and where there are options, students will follow. Nebraska can stop this bleed, this hemorrhaging of talent here and now by investing in these internships with LB386. We are in, no doubt, in a tough economy. Internships are often the first to go in a recession because companies are not laying off workers, they're laying off temporary positions. An investment in keeping Nebraska students here and bringing Nebraska students back is literally an investment, in my mind, in the future of our state. Students develop loyalty to companies that give them an opportunity, as we've heard many times, and we're recruiting the best and brightest in our state. By doing that, we have to be able to offer them jobs and that will pay dividends in the long run. I'd like to leave you with this, though. Nothing can replace the innovation that comes to businesses that choose to invest in internships. Integrating young Nebraskans into our businesses benefits not just the students but also the businesses that employ them. Students are the product of any university and the product that UNL and the Nebraska system is producing is solid through and through. I wholeheartedly, to no surprise of this committee I'm sure, believe that we have one of the best universities in the country and one that's just a few blocks away. We are preparing the next generation, my generation, to be competitive and successful on the national and international stage. If Nebraska companies are able to invest in and utilize these students and the innovation that they bring to all parts of Nebraska, the outcome will be extraordinary. That concludes my remarks. I'd be glad to take any questions. Thank you. [LB386]

SENATOR LATHROP: Thank you, Justin. We appreciate you coming here. I've never

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met the student regent, so that's also a pleasure that we have today. Any questions?  
Senator Carlson. [LB386]

SENATOR CARLSON: Thank you, Senator Lathrop. Thank you for your testimony and I think that as you were speaking one of the things that comes to mind, you brought up a very good point, Coach Pelini is successful here because he goes out and finds good players and recruits them to Nebraska. But none of the people we're competing against can recruit any more in number than he can, but that's not true in internships. So we do need to increase our number and that was a good point. Appreciate your testimony.  
[LB386]

JUSTIN SOLOMON: I think you hit on a good point there, too, that, you know, if businesses see the product we're producing at the university and they see that, you know, the state is going to invest into these internships as much as they are, you know, I think you have a good case to bring your company or business here and grow it in Nebraska. [LB386]

SENATOR CARLSON: Thank you. [LB386]

SENATOR LATHROP: Very good. [LB386]

JUSTIN SOLOMON: Thanks. [LB386]

SENATOR LATHROP: Thanks so much. I think that may have been our last proponent. Is anyone here in opposition to LB386? Anyone here in a neutral capacity? And since Senator Heidemann waived, that will close our hearing on LB386 and we appreciate the testimony of those who were here. And that will bring us to LB288 and Senator Mello. Thanks, Dennis. All right, Senator Mello, welcome to the Business and Labor Committee. [LB386]

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SENATOR MELLO: (Exhibits 13 and 14) Good afternoon, Chairman Lathrop and members of the Business and Labor Committee. My name is Senator Heath Mello, M-e-l-l-o, and I represent the 5th Legislative District, which includes south Omaha and Bellevue. LB288 would adopt the Small Business Regulatory Flexibility Act and is a revised version of a bill the committee heard last year, LB709. Ultimately, both bills are the product of model legislation that was jointly developed by the United States Small Business Administration's Office of Advocacy and the American Legislative Exchange Council, ALEC. Currently, Nebraska is just one of six states which does not have some form of regulatory flexibility, either by statute or executive order. The goal of the Small Business Regulatory Flexibility Act is simple--lessen the detrimental impact of government regulations on small businesses. More than 96 percent of all Nebraska businesses are small businesses, and small businesses spend significantly more than large businesses to comply with government regulations. According to a 2005 study by the United States Small Business Administration, businesses with fewer than 20 employees annually spend \$7,647 per employee to comply with federal regulations compared to just the \$5,282 per employee spent by businesses with more than 500 employees, which is a 45 percent greater burden. As the committee may recall, last session LB709 was advanced to the floor but failed to advance on General File. In the process of drafting LB288, my office worked extensively with the Legislative Fiscal Office to address the fiscal note from LB709 and fuse the provisions of this bill with the existing procedures in the Administrative Procedures Act. The remaining legislation, which I contend should not have a fiscal note, does the following: one, requires that state agencies provide electronic notice of any proposed rule or regulation that may have an adverse economic impact on small businesses; two, require state agencies to take into account any public comments from small businesses to proposed rules or regulations and consider less-burdensome alternatives; and finally, provides for judicial review of agency compliance with rule-making procedures. Unfortunately, when my office received a fiscal note this morning, it appears that some agencies chose not to read LB288 and assumed that the bill was identical to last year's bill. For reference, I have provided the committee members with a copy of the fiscal note from LB709 so

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they can compare the virtually identical language from one year to the next. Thankfully, some agencies saw that LB288 was markedly different from LB709. For an example, the Department of Insurance, which opposed LB709 last year, came back this year with no fiscal note on LB288. LB288 does not include a number of the provisions that were included in LB709 which would have created a fiscal note. For an example, LB709 would have required agencies to do periodic review of all rules and regulations; LB288 does not. LB709, which would have required a lot of paper notices; LB288 requires on-line notices, which is something that agencies are currently already doing. LB709 did not provide a definition, quote, adverse economic impact to reduce frivolous lawsuits; LB288 does. Quite frankly, the only way I potentially see any fiscal impact to agencies with the changes that we made in LB288 is if an agencies doesn't follow the provisions of the bill and subjects itself to judicial review. As I've already stated, 44 of 50 states already have some form of regulatory flexibility in place; Nebraska is just 1 of those 6 that does not. Agencies in other states have been able to implement these changes in their administrative procedures without significant heartburn. In fact, most states regulatory flexibility language goes further than LB288 does. In March 2010, Inside ALEC listed the Small Business Regulatory Flexibility Act as one of five model bills that would help create private sector jobs. States that have already adopted this bill have seen significant improvements in government-business relations and in promoting a business-friendly environment, and I believe Nebraska should join them by passing LB288. Thank you for your time and I'd be happy to answer any questions you may have. [LB288]

SENATOR LATHROP: Great. And it looks like Senator Wallman has a question for you. [LB288]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Thank you, Senator Mello, for coming here. Is this legislation actually, you know, copied from some other state or did you put this all together from all other states or... [LB288]



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SENATOR MELLO: What we did, Senator Wallman, is we...I guess to give a quick answer, we took LB709 last year, which was based on model legislation from ALEC and the United States Small Business Administration, Office of Advocacy, and reviewed what this committee proposed for amendments to that legislative bill last year when we debated it on General File and took that as a starting point. We then worked with the Legislative Fiscal Office to help address some of the state agencies' fiscal notes that they had put forward to help streamline this Regulatory Flexibility Act into what most agencies currently are already doing through posting on-line information in rules and regulations. So it's a hybrid version of what we saw last year, as well as trying to modernize with technology some of the main components. [LB288]

SENATOR WALLMAN: Thank you, Senator. [LB288]

SENATOR LATHROP: Very good. Any other questions? Seeing none, do you want to stay and close, Senator Mello? [LB288]

SENATOR MELLO: I want to waive closing to get back to Appropriations Committee. [LB288]

SENATOR LATHROP: Very good. [LB288]

SENATOR MELLO: Thank you. [LB288]

SENATOR LATHROP: All right. There must be something big going on down there. (Laughter) Any proponents here? Anyone wishing to testify as a proponent in favor of LB288? [LB288]

ROBERT HALLSTROM: (Exhibit 15) Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the National Federation of Independent Business in support of LB288. As Senator Mello

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has indicated, Small businesses are disproportionately impacted by the burden of regulations, primarily from the fact that they may not have legal accounting and consulting services on staff to make sure that they're in compliance with the vast number of regulations that may impact them, particularly true in the tax and environmental arenas of regulations. Senator Mello talked about some statistics. We have in my testimony that the 2008 report from the Small Business Administration, Office of Advocacy indicated a savings of approximately \$11 billion for small business from the Federal Regulatory Flexibility Act. We certainly don't expect those types of savings but would have savings, nonetheless, at the state level that we think is a positive outcome with the passage of LB288. Virtually every other state, only a handful had not adopted either an executive order or legislation similar to LB288 and we'd like to have Nebraska join the ranks of those that have. We do appreciate, Senator Mello's efforts, to streamline the bill, pare it back so that there would hopefully not be a fiscal impact. We would question as well some of the figures that have come out of the agencies, but would hope that the bill would be advanced. Be happy to answer any questions. [LB288]

SENATOR LATHROP: Are there any questions for Bob? I do have a question and maybe I'm going to ask you to put your lawyer hat on and lobbyist hat. Section 5 creates a...or provides for judicial review by any small business adversely affected or aggrieved in the Lancaster County Court. What would you see as the criteria for that? What's...I appreciate that set up this you got to give notice and you need to listen to the small businesses, but what's going to happen with that judicial review, in your judgment? [LB288]

ROBERT HALLSTROM: Well, if there was a judicial review, basically I mean I think it's just a system that would be set up where someone that felt aggrieved could go in and challenge a determination of the regulatory body. [LB288]

SENATOR LATHROP: This would be the scenario as I understand the bill, and let's say

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that you're an agency of state government, and I'm not thinking of one right now, that maybe is putting out a new regulation, but if you have a regulation...let's take the Department of Insurance. They want to have a new regulation so they blast all of the insurance agents in the state and say we're going to have a...we're going to change a regulation. If they change the regulation and that small business, that agent who sells insurance, says, well, how you've just created something where I got to file a 50-page report every year and I only sell two of those policies annually. This would allow them to go to court. They don't really have to...the cause of action doesn't really require first that you have not...that the state not have complied with the act. You just have to be aggrieved. You could be aggrieved because you don't like the regulation, right? [LB288]

ROBERT HALLSTROM: Uh-huh. [LB288]

SENATOR LATHROP: And then what are we going to have the court do when you get there, decide whether it's a good regulation or whether the state complied with the act? [LB288]

ROBERT HALLSTROM: My assumption would be whether the state complied with the act. [LB288]

SENATOR LATHROP: Okay. So the judicial review is not going to be over whether it's a good idea or they could have done it with a less intrusive way on small business. [LB288]

ROBERT HALLSTROM: I'd have to give some more thought to that, Senator. [LB288]

SENATOR LATHROP: Okay. Well, you might do that because I'm sure the committee would appreciate your insight as a NFIB guy. [LB288]

ROBERT HALLSTROM: Okay. [LB288]

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SENATOR LATHROP: Okay. Thanks, Bob. [LB288]

ROBERT HALLSTROM: Thank you. [LB288]

SENATOR LATHROP: Anyone else here in support of LB288? Is anyone here in opposition to LB288. How about a neutral capacity? And just before you begin, is it just Ron or is anybody else that will testify? And the reason I ask is I want to get the next introducers here, so...is Doug watching this? [LB288]

\_\_\_\_\_: Uh-huh. [LB288]

SENATOR LATHROP: Okay. Good. [LB288]

MIKE LINDER: Okay? All right. Good afternoon, Senator Lathrop and members of the Business and Labor Committee. My name is Mike Linder, that's M-i-k-e L-i-n-d-e-r. I'm the director of Nebraska Department of Environmental Quality. I'm here today to testify in a neutral capacity on LB288. Now the regulations that the NDEQ administers are among the most complicated that individuals and businesses will face. Many of DEQ's regulations reflect the fact that the majority of our programs in air quality, water quality, and waste management are derived from federal statutes. In order for states to administer federal programs of this type, the U.S. EPA must assure that the state regulation is at least as stringent as its federal counterpart. LB288 is an attempt to engage small businesses so they will not only have the ability to provide input into crafting the regulations but also to look for room for flexibility in the application of regulatory requirements on small businesses. This is a practice the DEQ currently utilizes with the further step, in our case, of trying to help educate small businesses on regulations after they actually go into effect. Our current practice on regulatory development is to attempt to identify potentially impacted stakeholders, including small business, small businesses. As soon as we have a draft or outline of our proposed

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regulation, we circulate that information to get input. We try to at identify issues of concern long before we begin the formal rule-making process which starts by issuing a 30-day notice of public hearing. Again then, after regulation is in effect, we try to do as much outreach as possible to get an understanding of that rule's requirements. We feel much, much better about a regulation that is understood because the chances of success of that regulation increase greatly when someone actually knows what they're supposed to do. As I previously noted, most of our regulations do have a tie to federal regulation which will hamper our ability to provide flexibility of the type envisioned in Section 4 of the bill. My reading of that section is there's no new authority for us but it is a good evaluation to undertake. A further comment on the analysis called for in Section 3 is that we feel we may need to do some additional work to evaluate and publish the, quote, potential adverse economic impact for some rules and that is the reason we included a small fiscal note to be able to retain expertise to assist with this evaluation. And perhaps with a greater understanding of what that actual evaluation is, we could do away with that need. One other comment is that the definition of small business for Nebraska really takes in most of our business and so a narrowing of that definition may be in order and I believe some other states have narrowed that. So in summary, yeah, we essentially do the requirements of LB288 and don't feel they would add too much additional burden to our agency. So that concludes my testimony. I'd be happy to answer any questions. [LB288]

SENATOR LATHROP: Very good. Do you have a thought on what the proper number is for a small business? [LB288]

MIKE LINDER: No, I've got some examples from other... [LB288]

SENATOR LATHROP: Five hundred, I read that and I thought, ooh, that's a pretty big business. [LB288]

MIKE LINDER: Yeah. I've got examples from other states that we could provide you.

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[LB288]

SENATOR LATHROP: Okay. Very good. Any other questions? I see none. [LB288]

MIKE LINDER: Thank you. [LB288]

SENATOR LATHROP: Thank you for your testimony. [LB288]

RON SEDLACEK: Chairman Lathrop and members of the Business and Labor Committee, my name is Ron Sedlacek, S-e-d-l-a-c-e-k. I'm here in a neutral capacity on behalf of the Nebraska Chamber of Commerce. We were here for the hearing of the predecessor bill, also in a neutral capacity. And really our argument in regard to either for or against, although we recognize the merits of the bill and the intent of the bill and we also recognize the fact that Nebraska is one of a handful of states that does not have regulatory flexibility, by the same token, in representing the business community, large and small, it becomes very difficult in many ways in which to say what is a small business and what is not. You know, should there even be a number? And if there is a dividing line, what does that mean essentially? The Legislature in Nebraska, our experience has been, generally gives the direction, passes the law. The agencies fill in that and hopefully with legislative intent, however, do they fill it in a little bit for this type of business or this size of business, and is there more to add here as opposed to there? And that becomes a matter of difficulty for our members. If you have 499 and you have a competitor with 501, is there that much difference? And why should they have a separate regulatory format, the difference between two employees? Senator Lathrop mentioned some lower number, which would invite then essentially a regulatory super flexibility act perhaps. You get these different tiers of regulations and the question becomes then does that invite either a, you know, just different ways of interpreting the same law just depending upon how many employees you have. And is that really the way to implement state policy? So while it is good and we see many of the favorable aspects, there is another side that we'd invite you to take a look at in considering this

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legislation. [LB288]

SENATOR LATHROP: I do remember this from last year now,... [LB288]

ROD SEDLACEK: Uh-huh. [LB288]

SENATOR LATHROP: ...the concern over once we draw a line then do the smaller guys get a leg up on the bigger guys. [LB288]

RON SEDLACEK: Uh-huh. [LB288]

SENATOR LATHROP: That's essentially your concern. [LB288]

RON SEDLACEK: Essentially. [LB288]

SENATOR LATHROP: Okay. Are there any other questions or concerns? I see none. [LB288]

RON SEDLACEK: Thank you. [LB288]

SENATOR LATHROP: Thanks, Ron. Anyone else here in a neutral capacity? Seeing none, that will close our hearing on LB288 and bring us to...we are going to...and I...we're waiting on Senator Dubas. We are going to introduce LB113 and LB530 and then take comment on both of them since they essentially do the same thing, maybe take a little different approach or approach it from a different point of view. And I guess as long as Senator Council is here, we'll start with Senator Council. And then when Senator Dubas gets here, we'll have her introduce her bill and then take testimony. [LB288]

SENATOR COUNCIL: Thank you very much, Chairman Lathrop, members of the

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Business and Labor Committee. I am Brenda Council, last name spelled C-o-u-n-c-i-l. I am the senator representing the 11th Legislative District and I'm here today to introduce LB...darn it, I just came from another committee and... [LB113 LB530]

SENATOR LATHROP: LB530. LB530. [LB113 LB530]

SENATOR COUNCIL: LB530. Whoo, it's one of those days, folks. I have bills coming out of the...feel like that commercial, I've got money coming out of the wazoo, I have bills coming out of the wazoo. (Laughter) I'm here to introduce LB530. And while the economy has impacted all of our communities, the impact is much more severe in those communities which have areas of high concentration of poverty. While the state of Nebraska as a whole can take some comfort in the fact that we have one of the lowest unemployment rates in the nation at around 4 percent, that is not the case for those areas of high concentration of poverty in our state such as the district that I represent. District 11 is in the unenviable position of having to suffer the effects of double-digit unemployment in both good and bad economic times. And in seeking to identify the causes of these employment disparities, many of my constituents are quick to acknowledge the impacts of lack of training and lack of adequate education and lack of transportation. However, they are also quick to point to the impact of factors that appear to bear no relationship to job performance but, instead, are indicators of unlawful discrimination. I submit that employers' use of an applicant's or an employee's credit report in employment determinations is such a potentially discriminatory factor. Title VII prohibits employers from using hiring criteria that have a disparate impact on applicants who are members of a protected class, and you know those protected classes are age, race, sex, national origin, religion, physical disability. The phrase "disparate impact" means that certain hiring criteria have the effect of excluding, for example, more blacks than whites from being hired. In 2000, a study was conducted by Freddie Mac which found that almost twice as many blacks as whites had, quote, bad credit records. That was 48 percent versus 27 percent. The study found that this correlation was even stronger than the correlation between income and bad credit. Of those with an annual



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income between...below \$25,000, 36 percent had a bad credit record, but having a higher annual income, between \$65,000 and \$75,000, reduced the percentage of people with bad credit by only 14 percent to 22 percent. When you look at the poverty rates in the district that I represent and districts of other high concentrations of poverty, you can see that the likelihood of income earnings being at the levels where the correlation is closer are less likely to exist. Thus, in 2009, a U.S. Equal Opportunity Commission commissioner noted that without a specific study validating the relationship between credit history and job performance, using credit checks almost seemed to be a clear violation of antidiscrimination laws. And I have had constituents from my district come to me and what's particularly alarming, as I indicated, constituents who have been suffering long-term unemployment acknowledge that in many cases it's due to their lack of skills and available, applicable training, education. But what I've been noticing lately and have been receiving calls in my office frequently are from young people who have followed all of our advice and counsel, have sought their postsecondary educations, have graduated, earned their degrees or certificates, have elected to remain in the state of Nebraska, and have been searching for months, some of them years, to find appropriate employment. Many of them completed their education with substantial student loan debt, and as a result of their inability to obtain the kind of positions of employment that would enable them to service their debt, many of them find themselves now in the category of having bad credit. Now I am sure that there will be some representatives of employers and I'm cognizant of their position, having been a management, labor and employment lawyer for nearly 20 years, and I understand what the issues are. And employers generally will give you four reasons for using credit reports, but, according to the EEOC's chief psychologists, these four are broken down like this and will give you an indication of what the real relationship is between use of a credit report and an employer's legitimate concerns about their hiring decisions. Employers use them to identify productive employees, a use that has little evidence to back it up. They often use it to identify reliable employees. Conceding that there is some evidence correlating good credit with reliability, similar results might be obtained through personality tests or their close cousins--integrity tests. Interestingly though, you may

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soon be examined by the EEOC for having a potential adverse effect impact on a protected class if you use those tests as well. They use credit histories to confirm employment history, which though a credit report can confirm basic information, the same might be attained from just the standard background screening that is provided without the applicant's financial details. And finally, and probably most disconcerting to me, is to identify those presumed to have an incentive for major fraud or theft. And what I say is most disconcerting to me about that is there has been no study or any research that has established a predictive relationship between credit and crime. Now I also appreciate the fact that there has been an increase in identity theft and that in many employers' instances employees are handling other people's information, sometimes their financial information. But again, without there being a predictor between someone's credit history and their propensity for crime, I question the validity of the use of the credit reports. So in an effort to eliminate a barrier that, in my belief, bears little relationship to job performance or credibility, the credit reporting should not be allowed to be used in employment decisions, whether it's for rejecting applicants or terminating employment, except in special excepted circumstances and those circumstances are whether federal laws or statutes, or state law or statutes for that matter, for example, which requires an employee performing a certain function to be bonded. [LB113 LB530]

SENATOR LATHROP: Sure. [LB113 LB530]

SENATOR COUNCIL: In those cases a credit report is going to be taken into consideration because that's one of the factors that's considered in determining whether you're bondable. But absent those kinds of situations where the job being performed by the employee rises to the level that bonding is necessary, LB530 would prohibit an employer from relying on that criteria in their employment decisions and would give an applicant or an employee a cause of action if the employer did so. [LB113 LB530]

SENATOR LATHROP: Very good. Thank you, Senator Council. [LB113 LB530]

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SENATOR COUNCIL: Any questions? [LB113 LB530]

SENATOR LATHROP: Are there any questions? I see none. [LB113 LB530]

SENATOR COUNCIL: Thank you. [LB113 LB530]

SENATOR LATHROP: We will have Senator Dubas introduce LB113, which is similar in subject matter. [LB113 LB530]

SENATOR DUBAS: Good afternoon, Senator Lathrop and members of the Business and Labor Committee. I think this is my first trip before this committee, so be nice to me. (Laughter) [LB113 LB530]

SENATOR LATHROP: You're the second person to say that today. [LB113 LB530]

SENATOR DUBAS: (Exhibit 16) Ah, you must have a reputation. My name is Annette Dubas, that's D-u-b-a-s, and I represent the 34th Legislative District. LB113 is an issue that was brought to my attention by several constituents over the past year. This bill deals with employers' use of credit checks when interviewing job applicants. This is an area that I really have little background or expertise with, but I have enjoyed doing the reading and the research and have learned a lot. And it does lend itself to a great discussion as to the pros and cons, so I am looking forward to the testimony that will be presented today. One of the things that became very apparent to me as I did the research and started looking through things was just how little privacy we really do have these days. With the advent of the Internet and now social media, it's very easy for someone to find out just about anything that they would like about you. That's not to say that it's always true, but they can find out a lot of information. Just Google your name and see what comes up. The real question that LB113 raises is, what is the employer looking for when viewing a credit report? Using a credit history is making an assumption that such history predicts job performance and dependability, but much of what I have

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read indicates that there appears to be little correlation. Using a credit history is a black-and-white snapshot of a person's financial history. It is not able to demonstrate events in your life that are out of your control, such as a death in your family, medical expenses and bankruptcy, mistakes you may have made in your youth, employment layoffs, and even identity theft. It is also not uncommon to have inaccuracies in your report, so if you don't monitor your report on a regular basis you may not know that there's inaccurate information in that report until after the fact, and clearing up those inaccuracies aren't always an easy fete to accomplish. Using credit history as a part of an employers' vetting process can create a Catch-22 for someone seeking a job. You can't improve your score if you don't have a job to pay your bills, and you may not be able to obtain a job without a good credit history and score. U.S. Equal Opportunity and Employment Commission has devoted a serious amount of time looking at this practice. In fact, this past weekend I read through a transcript of a hearing held by the commission last October. While it might sound like dry reading, it really was very informative. There seems to be an agreement that if you are applying for a job that involves a high level of fiduciary responsibility or involves accessing personal information and monetary accounts, this tool would serve an obvious purpose and that is why I've included an exception for bona fide occupational qualifications. This language is used to harmonize provisions in other employment discrimination statutes in Nebraska, but for jobs outside of that realm the question arises as to the usefulness of this type of a report. A prospective employee does have to give permission to obtain this report, but there really isn't much freedom with this option or not nearly as much as it may sound because you're not too likely to tell a prospective employer, no, you can't have access to that information. Employers are also required to let a job applicant know if they've been denied the job based on the information in the history and allow them the opportunity to clear up any possible misinformation that may be in that report. The practice of using a person's credit history as part of the interview process is gaining momentum. Granted, because of the cost an employer has to incur to run these types of reports, they're not likely to do it on every person who comes in and applies for a job, but this is something that is on the increase. One report I read states that a quarter of

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our consumers today have a credit score of 600 or below, and that is typically not a very good score to have. That number is up by 40 percent since the onset of the recession. The report goes on to state that one of the leading causes for bankruptcy today is related to medical expenses, but that may not be necessarily clear on the report. Because of privacy laws, the hospital or the medical institution or agency won't be listed as their name. It will just show different types of collection agencies. So I do appreciate the committee's kind attention to this today and to all of those who have braved the weather to attend the hearing. I will entertain questions but feel like those coming up behind me are going to be much better suited to give you accurate information, and again I'm looking forward to what they may bring forward too. I do have a handout, a letter from one of my constituents who brought this issue to my attention and wasn't able to come down today but wanted me to share her thoughts with you. [LB113 LB530]

SENATOR LATHROP: Very good. Thank you, Senator Dubas. Are there any questions? Senator Carlson. [LB113 LB530]

SENATOR CARLSON: Thank you, Senator Lathrop. Senator Dubas, you read something on there. What percent have a score of 600 or less and what did that pertain to? [LB113 LB530]

SENATOR DUBAS: It was...I believe it said something like a quarter, a quarter of our consumers today. So there wasn't a percentage. It just said a quarter of our consumers today have a credit score of 600 or below, which is typically a poor score, and that that number is up about 40 percent. So that number of a quarter is up about 40 percent. [LB113 LB530]

SENATOR CARLSON: And I would interpret that as 25 percent of general population. It's not just 25 percent of people seeking a job. [LB113 LB530]

SENATOR DUBAS: When they're talking consumers, that would be my... [LB113

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LB530]

SENATOR CARLSON: Okay. [LB113 LB530]

SENATOR DUBAS: ...that's the way I would interpret it also. [LB113 LB530]

SENATOR CARLSON: Okay. Thank you. [LB113 LB530]

SENATOR LATHROP: Very good. Thank you. Do you wish to stay and close? [LB113 LB530]

SENATOR DUBAS: I'm going to have to leave. I have another bill. But I do intend to come back, so hopefully I'll be able to get back before. [LB113 LB530]

SENATOR LATHROP: Okay. And a lot of people have come in today since we started this hearing and I expressed at 1:30 that we're going to try to be out of here at 4:00, and I have another bill after this, and that's only because of the impending storm and being able to allow people who are here and people who serve on the committee to get home safely tonight, so... [LB113 LB530]

SENATOR DUBAS: Well, if I don't make it back, I'll waive my closing. [LB113 LB530]

SENATOR LATHROP: Okay. And I bring that up only so that you can see that we're getting close to a time crunch and that's not to cut anybody off but just, if you can, avoid repetitive testimony today that would be appreciated. [LB113 LB530]

SENATOR DUBAS: Thank you. [LB113 LB530]

SENATOR LATHROP: And with that, we'll take the first proponent of either LB113 or LB530. [LB113 LB530]

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KEN MASS: Senator Lathrop and committee, my name is Ken Mass, representing Nebraska AFL-CIO and here in support of both bills. Basically, they have laid out the ground rules but basically credit checks create a fundamental Catch-22 for job applicants. Use of credit checks in hiring could prevent economic development of millions of Nebraskans and Americans, and credit history does not predict job performance. I'll leave it at that and if there's any questions, I can answer them. [LB113 LB530]

SENATOR LATHROP: I appreciate your testimony and your thoughts, Mr. Mass. Any questions? Senator Carlson. [LB113 LB530]

SENATOR CARLSON: Thank you, Senator Lathrop. What's the source of the statement that it doesn't predict job performance? [LB113 LB530]

KEN MASS: What is what? [LB113 LB530]

SENATOR CARLSON: The source, where does that come from? [LB113 LB530]

KEN MASS: It came from a statement from the National Consumer Law Center. [LB113 LB530]

SENATOR CARLSON: Okay. Thank you. [LB113 LB530]

KEN MASS: I thought you were going to ask me if I'm a Jets fan. [LB113 LB530]

SENATOR CARLSON: Oh. [LB113 LB530]

KEN MASS: I'm a Bears fan but the Packers are representing us this year. (Laughter) [LB113 LB530]

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SENATOR LATHROP: And let the record reflect that he made that statement as he was getting out of the chair and scooting to his seat in the front row. Our next proponent. [LB113 LB530]

JONATHAN REHM: (Exhibit 17) Yes. Thank you, Senator Lathrop, Senator Cook, Senator Carlson, Senator Ashford, Senator Wallman. It's a small crew today so I can mention everybody. I'm Jon Rehm. I'm testifying on behalf of the Nebraska Association of Trial Attorneys in support of LB113. I'm also here to present...testifying in favor of LB113 and LB530 on behalf of Rehm, Bennett Moore law firm in Lincoln, Nebraska. NATA just didn't discuss LB530 at the last legislative committee so we likely would lean towards supporting it. I'm not going to duplicate much effort, much of what's been said so far. I do have a study here, Senator Carlson, from Jerry Palmer and Laura Koppes of the Eastern Kentucky University presented to the American Psychological Society in 2003 that said there is no link between credit history and dishonesty in employment. So there is that research out there. I have looked at, you know, I like a lot of things about the bills. You know one thing that maybe opponents of this bill should be pointed out to, there's still the option that they can look. There's other consumer background checks just besides credit history. You can also look at, you know, criminal background on that. Nothing in this bill limits the use of that so there's still a way to screen out, you know, employees who would have dishonesty, you know, to screen out undesirable employees. With that, I, you know, I like how it's included. I think maybe there should be reference to maybe the Fair Labor Standards Act, in fact that, you know, I think to give a little bit of guidance to employers as to know what's an exempt employee and what's not a nonexempt employee, the difference being the exempt employee can basically...not exempt introduce some independent judgment. And obviously, you know, people with nonexempt will be, you know, probably more like...would...there would be more a legitimate business reason to check somebody like that than somebody without discretion. Obviously, there could be "carve-outs" as well for those who are bonded. So I think this bill would be good for workers in Nebraska. Thank you. [LB113 LB530]



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SENATOR LATHROP: All right. Thanks, Jon. Any questions? I see none. Thanks for your testimony today. [LB113 LB530]

JON REHM: You bet. [LB113 LB530]

SENATOR LATHROP: Kathleen, we haven't seen you here... [LB113 LB530]

KATHLEEN NEARY: How are you though? [LB113 LB530]

SENATOR LATHROP: ...and I can't remember if we've ever seen you here. [LB113 LB530]

KATHLEEN NEARY: I think you have. [LB113 LB530]

SENATOR LATHROP: It's good to have you here. [LB113 LB530]

KATHLEEN NEARY: Thank you, Senator. Members of the committee, Mr. Chairman, my name is Kathleen Neary. I'm an attorney here in Lincoln and I have the pleasure of representing people in an employment setting and also I work in the area of personal injury, so I have a unique view on these bills, particularly LB115 (sic). But I'm here to say that we're not reinventing the wheel with this LB, particularly LB115 (sic). And what I... [LB113 LB530]

SENATOR LATHROP: You mean LB113? [LB113 LB530]

KATHLEEN NEARY: I'm sorry, LB113. [LB113 LB530]

SENATOR LATHROP: Okay. [LB113 LB530]

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KATHLEEN NEARY: I'm sorry. And particularly the way I see it is there is a case that was issued, it's Griggs v. Duke Power. It's a United States Supreme Court case. It was handed down in 1971, 401 U.S. 424. And what's particularly interesting about this case is that in Griggs v. Duke Power the employer used an employment test with regard to internal transfers and promotions of employees that resulted in a disparate impact on certain classes of employees that were employed by Duke Power. But I think what's most important about that decision, that has been the law of this land and affirmed many times since 1971, is that in Griggs the court said that it prohibited employment tests that are not reasonably or a reasonable measure of job performance. That's common sense and I think that's what this bill is about today--common sense. And in fact Griggs v. Duke Power, the U.S. Supreme Court held that the employer had the burden of measuring and proving the necessity of a test--common sense. Now again, I think LB113 just merely codifies what has been the law of this land since 1971. Now aside from the federal mandate, it's just common sense and why, in the blink of an eye, in the blink of an eye a person's universe can be turned upside down, whether the semi runs a red light, whether the drunk driver rear ends you, whether you slip and fall and break your leg sledding like my daughter did two weeks ago. We were lucky to have good health insurance but there are many people who work hard every day to earn a living that don't have the benefits of a person such as myself and medical bills, serious illnesses can, in just a split second, wipe away a person's credit report through no fault of their own. And for that, particularly when we couple the economic conditions of today in terms of the layoffs and the cutbacks, when people are just living paycheck to paycheck, that a credit score can be just destroyed so quickly. And as Nebraskans, and I'm a near lifelong Nebraskan, we've always valued our ability to earn a living for our families and LB113 codifies what the law is and just makes it common sense to let people earn a living. [LB113 LB530]

SENATOR LATHROP: Thanks, Kathleen. Are there any questions? Seeing none, are there any other proponents of LB113 or LB530? [LB113 LB530]

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JONATHAN REHM: Senator Lathrop, if I may introduce into the record a report I cited. (Exhibit 17) [LB113 LB530]

SENATOR LATHROP: Sure, if you'll give that to the page, she'll pass it around. Are there any other proponents? Anyone here in opposition to either LB113 or LB530? [LB113 LB530]

JENNIFER FLYNN: Good afternoon, Senator Lathrop and members of the committee. I know I'm standing between everyone and the snowstorm. I flew in from D.C. I think I'm going to be in Lincoln for a while, so if anyone has any questions the next couple of days, I think I'll be here. I know we're really short on time so I want to give you a perspective from where we're coming from. My name is Jennifer Flynn, it's F-I-y-n-n. I represent the Consumer Data Industry Association. We are a national association that represents the consumer reporting industry, including Equifax, TransUnion, and Experian. A couple of things that I want to point out, there have been studies that have been done by the Society of Human Resource Managers that show how many employers are actually using credit checks as a part of a background screen. It's about 15 percent of background checks do they actually have any type of credit as part of that background screening, so it's a very small percentage. When they are using it, they are using it for positions where they feel that it is an important piece of information for them to have. How employers use that information, in what cases, that's something that the employers can talk to this committee about in specific. I can't really talk to that since that's not where our association is focused on, but I wanted to give you that piece of information. Secondly, a credit report is not a snapshot. It's absolutely the opposite. It is your entire lifetime of credit. So if you've had the last two years like everyone has had--a mortgage that, you know, is more expensive than the house you own, or law school loans that you'll be paying for ever, until you're 60, which is great but, you know, that's okay--that's reflected on the entire part of your credit report. It's not going to show just the last two years. It's going to show my last 20 years. And anything that was bad when I was 18 has dropped off by now because seven years is as long as a negative piece of

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information can stay on unless it's a bankruptcy, which is ten years. So your credit report shows your entire history, though if you have something on there that's bad because of the last two years in the economy, you can explain that. The next thing, and I know I'm running out of time, really important--there are no scores in employment screening; doesn't exist. It is a report, not a score. There are no scores ever used in employment screening. That is not what scores are used for. That's for risk. It's for a lender. It's a completely different subject. And as someone else mentioned, I think one of the senators mentioned, there's all kinds of requirements under the FCRA about how a report is pulled, the information that's given to the employee, the information given to the employee about how they can contact a consumer reporting agency, specifically give them the opportunity to explain it before a decision is ever made. And with that I will close, because I know I'm running out of time and I open up to the committee for any questions that you may have. [LB113 LB530]

SENATOR LATHROP: Very good. Thank you for your testimony... [LB113 LB530]

JENNIFER FLYNN: Sure. [LB113 LB530]

SENATOR LATHROP: ...and coming all the way from Washington, D.C., to do it. [LB113 LB530]

JENNIFER FLYNN: Absolutely. [LB113 LB530]

SENATOR LATHROP: Any questions? Yes, Senator Carlson. [LB113 LB530]

SENATOR CARLSON: Thank you, Senator Lathrop. How comfortable are you with the figure that only 15 percent require any credit check? [LB113 LB530]

JENNIFER FLYNN: What that is, and I can get the committee the study if you'd like, Senator, the Society of Human Resource Management did a study throughout all their

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human resource managers and their companies that are members of their association, and of all the background checks that are done only 15 percent have a credit check component of their background check. [LB113 LB530]

SENATOR CARLSON: Okay. Thank you. [LB113 LB530]

JENNIFER FLYNN: Sure. [LB113 LB530]

SENATOR LATHROP: Very good. Thank you very much for your testimony. [LB113 LB530]

JENNIFER FLYNN: Thank you very much. [LB113 LB530]

SENATOR LATHROP: Any other persons here in opposition? [LB113 LB530]

RON SEDLACEK: (Exhibit 18) Chairman Lathrop and members of the Business and Labor Committee, for the record, my name is Ron Sedlacek, that's spelled S-e-d-l-a-c-e-k. I'm here to testify on behalf of the Nebraska Chamber of Commerce as well as the Greater Omaha Chamber of Commerce. They have a letter to circulate and they would be in opposition to both LB113 and LB530. Essentially two to three points that we'd like to make, and this position as taken after review and much discussion among our labor relations council. One is the question of the BFOQ or the bona fide occupational qualification requirement that exists in the bill, and the question becomes, as alleged by the proponents, which I'm not competent either to say that it's true or not, I don't know what these particular credit histories are used for, but if it deals with productivity, reliability, or employment history, or theft or fraud, as listed, then what is a bona fide occupational...what is a BFOQ in this particular case? If you require as an employer that your employee use their own credit card, for example, for expenses, and because they don't want to issue their own because of abuse in the past, and that's their policy, to have your own credit card to perform the job, is that part of the BFOQ

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standard to be used? You know, just a question as to whether or not that arguably would pass the smell test in that regard if you were to maintain that as a defense. This is...what is the difference between a bank teller and a cashier at a grocery store? If there is no indication that this has a reflection, then why are there "carve-outs" for anyone? It seems that there would not need to be any "carve-out" whatsoever. Cash is cash that you're handling; both positions are generally audited. Reconciliation papers must be made each day at the end of the day. Finally, the objection essentially was based on let's look at how the U.S. EEOC comes down on this issue, and once they do and once it's completed then, by all means, if we need a state regulation in this regard to supplement and reflect the federal law, we would be in conformity with that. And those are the reasons why I'm here today. [LB113 LB530]

SENATOR LATHROP: Okay. [LB113 LB530]

RON SEDLACEK: Yes, sir. [LB113 LB530]

SENATOR LATHROP: Senator Ashford. [LB113 LB530]

SENATOR ASHFORD: Yeah, this paragraph, this is a very general letter that does not give any in-depth discussion whatsoever of this bill. [LB113 LB530]

RON SEDLACEK: I was asked to pass that letter on to you by the Greater Omaha Chamber of Commerce. [LB113 LB530]

SENATOR ASHFORD: Okay. I just...it just seems to me if the Omaha Chamber is going to make an objection to something, that they could lay out the rationale, not some general ideological statement about the topic. But I just... [LB113 LB530]

RON SEDLACEK: I'll pass that on to them, Senator. [LB113 LB530]

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SENATOR ASHFORD: Well, I think that would be good and I think this comment here, "A consistent message from our members is that it is becoming increasingly difficult to comply with a mounting regulatory burden. When it becomes harder for employers to do businesses in Nebraska, it becomes harder for the chamber to bring in new businesses and jobs to the state." I just think that's bunk and let me tell you why. Nebraska is a great place to do business. The Omaha Chamber of Commerce is bringing new businesses into Nebraska. They are...Nebraska is the number one in the United States to do business. You know, it just defies credulity to have these general ideological statements made on difficult issues, in my view, and that if the regulatory burdens in the...this isn't you... [LB113 LB530]

RON SEDLACEK: I understand. [LB113 LB530]

SENATOR ASHFORD: If the regulatory burdens in this state are so egregious, I'd like a listing of what those egregious regulatory burdens are and why Nebraska's regulatory burdens are so much greater than other regulatory burdens. My view would be that we...this Legislature works overtime not to overly burden business. We provide every possible business incentive we can do under the law. We provide...we have...it's a right-to-work state. We have significantly positive employer-employee relationships in this state. We have a friendly state government. We cut taxes. I mean I'd like to know what the regulatory burden is. And the next...the message I think to anybody that I think there's a legitimate discussion about the issue that's raised by the bills, that's fair, but I would like to know what the regulatory burdens on the employers of this state are and which ones we need to address, because I don't hear that from businesses. If there are regulatory burdens, they're imposed by the federal government, not by the state government. I mean I just...I don't know. [LB113 LB530]

RON SEDLACEK: Yeah, just in response, I didn't draft the letter. In order to save time for the hearing, they asked me to just submit the letter on their behalf. [LB113 LB530]

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SENATOR ASHFORD: I just want...you know, this is serious business that we undertake in this Legislature and we bend over backwards to provide business incentives to people in this state, starting with LB775. And I think there's another message that has to go back to the Omaha Chamber of Commerce and then I'll shut up. When LB775 was introduced, you were here and you were a proponent, correct, working? [LB113 LB530]

RON SEDLACEK: Uh-huh. [LB113 LB530]

SENATOR ASHFORD: And every single labor union in the state was a proponent, remember? And every business group that I know of was a proponent, correct? [LB113 LB530]

RON SEDLACEK: I think so. [LB113 LB530]

SENATOR ASHFORD: Well, I mean I guess the point is it seems to me that we need to, when we come in and make statements about the regulatory environment of this state, that we go back to what is in fact correct and what's correct is that this state, since 1987, when Kay Orr was Governor, we made significant changes in the way we deal with businesses that have brought enormous numbers of businesses into this state. I just don't think the regulatory climate is bad. I don't know...you know, we'll look at these bills and maybe they do or don't, but I mean to...our members are increasingly upset, they can't do anything, they can barely open their doors in the morning, if you read this letter, and that's just not what's happening. Thank you, Mr. Chair. [LB113 LB530]

SENATOR LATHROP: Very well. Anyone else with a question or concern? Senator Carlson. [LB113 LB530]

SENATOR CARLSON: Thank you, Senator Lathrop. Ron, I'm going to tag on real quickly to what Senator Ashford said because all you're doing is some of the things that



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I do now and then, and that's bring forth an issue that a constituent asks me to bring forth. So this is not you. But it also says in here, "Our concern is the general regulatory burden on businesses on Nebraska and additional burdens that would result from the adoption of either of these proposals." Well, if it's not to look at or call for a credit report, that looks like it's imposing less responsibility and time than if it is called for. So I think it's kind of unfortunate put together, and it's not you. Now a bad thing in our system here is that those are proponents...who our proponents, have to tell their story first and then sit back and listen to the opposition. Senator Council is still here and she can address this. But if she weren't, the opposition has an advantage because they can say their thing and leave. That's not the way you operate but this was not a very good statement, Ron. That's not you. Thank you. [LB113 LB530]

SENATOR LATHROP: Okay. [LB113 LB530]

RON SEDLACEK: Okay. [LB113 LB530]

SENATOR LATHROP: Very well. Thank you, Ron. [LB113 LB530]

RON SEDLACEK: Thank you. [LB113 LB530]

SENATOR LATHROP: Appreciate your testimony. Anyone else here that... [LB113 LB530]

ROBERT HALLSTROM: (Exhibit 19) Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for both the National Federation of Independent Business and the Nebraska Bankers Association. Both organizations are opposed to LB113; only NFIB is opposed to Senator Council's bill, LB530. With a slight degree of trepidation, I'll move forward with my (laughter) testimony. I think just a couple of issues: Senator Dubas pointed out some of the items that I had in my testimony with regard to the rights and protections of

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employees under the Fair Credit Reporting Act in terms of having to give written permission, being entitled to certain copies that are based on adverse action, so I won't go into any great detail there. I think one of the specific issues or problems that we see with LB113 is the generic reference to bona fide qualification for employment, but what exactly does that mean? Is that going to lead to a hotbed of litigation? Certainly businesses such as financial institutions and insurance companies would not doubt be exempted or the interpretation would arguably that they should be exempt, but without further clarification we fear there would be a great deal of litigation over that particular issue. With that, I'd be happy to address any questions that the committee might have. [LB113 LB530]

SENATOR LATHROP: Senator Ashford. [LB113 LB530]

SENATOR ASHFORD: Well, this...those are fair comments, Bob. [LB113 LB530]

ROBERT HALLSTROM: Thank you, Senator. [LB113 LB530]

SENATOR ASHFORD: And the point is that there's clearly differences of opinion on these bills and that's not my point. My point is what is the point I made, which has nothing to do with your testimony. So thanks. [LB113 LB530]

ROBERT HALLSTROM: Yeah. And I think it boils down to, Senator, you know, a lot of bit of discussion between whether you get good evidence out of those. We seem to think and believe that you do. There are other avenues that were testified to with regard to the disparate impact issue. Do we need to rise the level of using a credit report to discrimination to the same level as a protected class, which I think we do on its face as opposed to allowing the disparate impact treatment of the Griggs case to control in this area. [LB113 LB530]

SENATOR LATHROP: Okay. Much to think about. [LB113 LB530]

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ROBERT HALLSTROM: Thank you. [LB113 LB530]

SENATOR LATHROP: How many other people intend to testify on this bill? Oh really? Okay. [LB113 LB530]

KATHY SIEFKEN: Thirty seconds. [LB113 LB530]

SENATOR LATHROP: Yeah. We do not need a trail of people to come up and say the same thing over and over and over, okay, and if you want to fill out a form you can fill out a form. I have people that have to get back home tonight and it is...the storm is starting and I, for one, need to leave in about ten minutes, okay? So if you have something to say that's new, come on up. If what you want to say is, I agree with the last guy, you can fill out a sheet and indicate your support for what someone else has said. I still have another bill to take up and...yeah. [LB113 LB530]

KATHY SIEFKEN: Very quickly, Kathy Siefken, Nebraska Grocery Industry Association in opposition to LB113 and the reasons for that are simply, and Hallstrom hit on that, was the language regarding the bona fide occupational qualification. We don't use credit reports very often but when we do, we feel that we really need them so we want to keep them as a tool in the hiring process. Our attorneys that took a look at this are very concerned about the liability that we would have to prove. Even if we didn't use a credit report, we would have to prove that we didn't use it, and that's not the reason why we didn't hire someone. [LB113 LB530]

SENATOR LATHROP: Okay. Thanks, Kathy. [LB113 LB530]

KATHY SIEFKEN: If you have any questions... [LB113 LB530]

SENATOR LATHROP: Any questions? Seeing none. [LB113 LB530]

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\_\_\_\_\_: I'd like to testify in a neutral capacity. [LB113 LB530]

SENATOR LATHROP: Well, we'll get to neutral in a moment. [LB113 LB530]

\_\_\_\_\_: Okay. [LB113 LB530]

\_\_\_\_\_: Just want us to turn these in? [LB113 LB530]

SENATOR LATHROP: If you are satisfied to indicate your opposition on the sheet, that's fine. If you feel compelled to testify... [LB113 LB530]

\_\_\_\_\_: So can we just say me...if we just want to say me too, we just do this, just turn this in? [LB113 LB530]

SENATOR LATHROP: Sure. [LB113 LB530]

\_\_\_\_\_: Okay. [LB113 LB530]

SENATOR LATHROP: We will record your opposition with...by paper. Are there anybody else who cares to testify in opposition? And I don't mean to be short. I think you can appreciate that we have a number of members that live in Omaha and would like to be on the road before it gets...before they're snowed in Lincoln. [LB113 LB530]

TAD FRAIZER: I'll squeeze in real quickly here, Senator. My name is Tad Fraizer, T-a-d F-r-a-i-z-e-r, representing the American Insurance Association, a national trade association of property casualty firms. We'd just like to draw your attention in both bills. We're more or less neutral on LB113. Weren't sure where to be on LB530. Since I got some negative comments, I'll say opposition. But wanted to draw your attention to the question of bonding as it might be affected under these bills. I know under LB530 there

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are certain specific exemptions for bonding, but I think it has to be required by the...that Section 3(2) on page 4 of the green copy. It makes reference to a state or federal mandate for it, doesn't include local. It includes certain handling of assets, includes a managerial position, or if you can get either the federal or state Department of Labor to come up with a bona fide occupational question. We just wanted to call your attention there may be areas outside those four specific areas in LB530 where an employer may reasonably want bonding. I mean I get ads all the time for cleaning services to come to my house that list, you know, we're insured and bonded. I'm not sure if someone who's doing house cleaning might fall under one of these specifically excepted categories. I think it's kind of up to a businessperson to decide, in their best judgment, whether for a specific position, either for their surety or for the surety of their customers, whether bonding is appropriate which might invoke the possibility of some form of credit research. And I'd be happy to answer any questions. [LB113 LB530]

SENATOR LATHROP: Very good. Any questions for Mr. Fraizer. Seeing none, was there anyone else that was testifying in opposition? Okay. Anyone in a neutral capacity? [LB113 LB530]

\_\_\_\_\_: We don't testify (inaudible). [LB113 LB530]

SENATOR LATHROP: I'm sorry? [LB113 LB530]

\_\_\_\_\_: We won't testify. We'll just turn that in. [LB113 LB530]

SENATOR LATHROP: All right. [LB113 LB530]

\_\_\_\_\_: We have written testimony to submit. [LB113 LB530]

SENATOR LATHROP: Okay. We'll make your written testimony part of the record and thank you. Would that be from the credit unions? [LB113 LB530]

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\_\_\_\_\_: Yes. [LB113 LB530]

SENATOR LATHROP: All right. Thank you. Sheriff. [LB113 LB530]

TERRY WAGNER: (Exhibit 24) Good afternoon, Senator Lathrop. My name is Terry Wagner. I'm the sheriff of Lancaster County. Wagner is W-a-g-n-e-r. I'm here today to testify in a neutral position on LB113 and with some reservations on LB530. And I'm also here and Lynn Rex has authorized me to speak for the League of Municipalities as well. I think a huge concern that we have in the law enforcement employment arena is the exemption that this LB113 would have from us using credit checks for prospective law enforcement officers. I think integrity and character are huge issues with us in our hiring process. We don't use a credit check to automatically disqualify somebody but I think, as it's used in its totality with the entire application process, it can raise red flags for us to inquire further about what's the problem with this individual's decision-making ability. And so for those reasons, we'd like to have law enforcement agencies exempted from both bills, if that's acceptable to the introducers. I think it's incumbent upon Nebraska to have law enforcement officers with integrity and I think credit goes to that issue. I'd answer any questions the council may have. [LB113 LB530]

SENATOR LATHROP: Any questions? I see none. Thanks, Sheriff. [LB113 LB530]

TERRY WAGNER: Thank you. [LB113 LB530]

BARBARA ALBERS: Good afternoon, Senators. I'm Barbara Albers the director of the Nebraska Equal Opportunity Commission, Albers, A-l-b-e-r-s. I am here on behalf of the commission. Our commissioners asked me to come and testify in a neutral capacity. As I think this committee is aware of the budget cuts that state agencies are facing, we're facing a 10 percent cut. That's been the Governor's recommendation and also the recommendation of this committee. With the passage of LB113, it's hard for us to

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estimate how many...how much our caseload will increase but we conservatively estimate that we would have an increase of 60 to 70 cases. Our budget cut that we're facing means the elimination of two investigator positions, so with the passage of this bill we did submit a fiscal note to add an investigator position back. That's approximately \$58,000 with salary including benefits. And if the agency...if our continuation budget is not cut by 10 percent then we believe we could absorb these cases. However, we would probably...that would probably result in a longer time frame from the time of filing to the time of determination because of the increase with no additional staff. [LB113 LB530]

SENATOR LATHROP: Okay. Any questions from the committee? Seeing none, thank you for the information. [LB113 LB530]

BARBARA ALBERS: Thank you. [LB113 LB530]

SENATOR LATHROP: We have, before we allow Senator Council an opportunity for her close, letters from the Nebraska Building Chapter, the Associated General Contractors, two letters dated today both in opposition to LB113 and LB530. (Exhibits 20 and 21) Senator Council. [LB113 LB530]

SENATOR COUNCIL: Yes, Senator Lathrop, thank you. And appreciating the time constraint, just a couple of quick points. Number one, I just want the committee to understand that LB530 was modeled after other legislation that has been enacted. There's been a growing trend in the states to enact legislation limiting employers' use of credit reports. There are currently four states that have similar laws in effect and there are more than ten who have pending legislation. And I tried to get the information back up from my staff, Montana sticks in my head, but I think that LB530 was modeled after Montana statute, to kind of give you an insight. And in terms of my concern about violation of antidiscrimination laws, Ms. Flynn, and I spoke to her out in the hall, the information she shared with the committee was most enlightening because many of my constituents who happen to be African-American who have reported this issue to me

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have been told that they were denied employment because of their credit score, not what's set out in their history. They've been told their credit score. Now those of us who have practiced in the area of employment discrimination know that pretext. If the score, if they don't get the score, telling someone that it's the score is a pretext for something else and in this case, with credit history's connection to lower-income people and particularly people of color, the pretext of the credit score is to avoid revealing that the employment decision was based on race, and that's something that we as a Legislature need to nip in the bud as quickly as possible. And to my friend Ron Sedlacek, I mean...and he...Ron and I have had a talk about this, I agree, I don't think that the chamber, Omaha Chamber of Commerce, really discussed the issue. But the fact of the matter remains, EEOC currently has two cases pending before it now on this very issue that, you know, is going to set the tone for where we can go policywise in the future, you know, and it could reach the Supreme Court. And the reference to the Griggs and the Duke case, that was '71, you're going to see some law developing and here we have an opportunity to get in front of that. And, Ms. Albers, I would never want to impose additional responsibilities on the NEOC without appropriate funding, but the hope is that people would file this with the EEOC and then EEOC would contract with you and pick up some of that cost, hopefully. But thank you for your time and attention, committee members, and I hope you advance LB530 and I'm willing to work with Senator Dubas, if it's appropriate, to see if we can craft one bill that addresses this issue. [LB113 LB530]

SENATOR LATHROP: Good idea. Thank you, Senator Council. That will close the hearing on LB113 and LB530, and we'll go on to Senator Karpisek on LB472. [LB113 LB530]

SENATOR KARPISEK: Thank you, Senator Lathrop, members of the committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. I represent the 32nd Legislative District. This bill is similar to the federal Workers Adjustment and Retention (sic) Notification Act, or WARN, but it is broader than the federal act in that it applies to a wider range of employers and deals with layoffs of fewer employees, as low as 25. In



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general, the bill provides that an employer shall not order a mass layoff, work site closing, or transfer of operations unless 60 days prior they have given written notice to each affected employee, each representative of the affected employee, the Commissioner of Labor, the local work force investment board, and the mayor of the city or village where the action will occur. If the action will result in an employment loss of 250 or more employees, the employer must give the same notice as above 120 days before the layoff, closing, or transfer. The issue coming with this bill is that we have seen some plant closing, especially in or near my district, and we are concerned that the federal WARN Act can kind of be massaged a little bit to layoff so many every month and actually it's a plant closing but they're not giving that amount of notice to the workers to actually realize that it is a plant closing. With that, I'd take any questions. [LB472]

SENATOR LATHROP: Okay. Any questions for Senator Karpisek? I don't see any. [LB472]

SENATOR KARPISEK: Thank you. [LB472]

SENATOR LATHROP: Are you going to stay to close? [LB472]

SENATOR KARPISEK: I will stay to close. [LB472]

SENATOR LATHROP: Okay. Very good. Thanks. Those in favor. [LB472]

KEN MASS: Senator Lathrop, my name is Ken Mass, representing Nebraska AFL-CIO and here today in support of LB472, a very simple bill. And, yes, Senator Karpisek stated it well. This is a national...the federal has a WARN Act and this is bringing down the WARN Act into the state. There are some changes on there but basically it gives workers time to learn and bob and pursue other job and training opportunities while minimizing the time workers are unemployed and not enrolled in education and skill

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development (inaudible); giving social service providers time to prepare and implement coordinating and effort, services for the displaced workers; giving communities an opportunity to deliver strategies and response to job loss and revenue; and workers should receive longer notification notice. Basically, this is...many states have provided for lower thresholds than the federal status. It's basically 100 employees on the national. California has 75, Hawaii has 50, Illinois has 75, and New York has 25. This bill would be down to 25 employees. So with those comments, I'd ask any questions. Would ask for your support for LB472. [LB472]

SENATOR LATHROP: Thanks, Ken. Any questions for Ken Mass? Seeing none,... [LB472]

KEN MASS: Thank you. [LB472]

SENATOR LATHROP: ...appreciate your testimony. Anyone else in support of LB472 here to testify? [LB472]

\_\_\_\_\_: (Inaudible) [LB472]

SENATOR LATHROP: Pardon me? [LB472]

\_\_\_\_\_: I just agree with what he says. [LB472]

SENATOR LATHROP: Oh. All right. Thank you. I didn't mean to frighten everybody away but...well, maybe I did. Anyone else in support? Anyone here in opposition? How many folks wish to testify? Okay, come on up, Ron. [LB472]

RON SEDLACEK: Good afternoon, Chairman Lathrop and members of the Business and Labor Committee. For the record, my name is Ron Sedlacek, S-e-d-l-a-c-e-k. Again, I'm here before the committee on behalf of the Nebraska Chamber of

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Commerce. I was not asked to hand a letter out for the Omaha Chamber on this one (laugh) so... [LB472]

SENATOR ASHFORD: Did you get fired in three... [LB472]

RON SEDLACEK: Pardon? [LB472]

SENATOR ASHFORD: ...in the last five minutes? [LB472]

RON SEDLACEK: I haven't been fired. I was never hired. She gave me a letter. I got a letter. [LB472]

SENATOR ASHFORD: Oh, you're kidding. [LB472]

RON SEDLACEK: No! They gave me a letter to hand to you. [LB472]

SENATOR LATHROP: The record will reflect...the record will reflect that she scooted out of here. (Laugh) [LB472]

RON SEDLACEK: I'm not...I'm not employed by them. It was a letter that they gave to me to hand to the committee. I gave testimony for the State Chamber. [LB472]

SENATOR ASHFORD: Well, that shows something. [LB472]

SENATOR LATHROP: Ron. Ron. Ron. [LB472]

RON SEDLACEK: Thank you. [LB472]

SENATOR LATHROP: What's your position on this one? (Laughter) You're... [LB472]

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RON SEDLACEK: Opposed. (Laugh) [LB472]

SENATOR LATHROP: ...opposed. Got it. All right. [LB472]

RON SEDLACEK: I'd like to... [LB472]

SENATOR LATHROP: And that was for the chamber, the Nebraska State Chamber...  
[LB472]

RON SEDLACEK: Nebraska Chamber of Commerce. [LB472]

SENATOR LATHROP: ...only. [LB472]

RON SEDLACEK: Yes. [LB472]

SENATOR LATHROP: All right. [LB472]

SENATOR ASHFORD: They do a great job. [LB472]

RON SEDLACEK: (Exhibit 22) I took an arrow for her. (Laugh) So I'd like to just hand out three separate items and one is just a fact sheet on WARN, it's a federal law; secondly, an employer manual; third, this is what other states are doing in this regard. Most of them are complying with the federal law. And I'll be brief. Essentially, going through side-by-side comparison, there are many areas within this legislative proposal that are contrary to the federal act and there are many exceptions that the federal act takes into account, such as economic hardship where you have walkouts, where you have...that they recognize that are for some reason deleted from this particular bill. We find that some of the punitive damages that essentially are the damages are punitive in nature, but there's no faltering company exception in particular or...and that's a company that's seeking new capital, trying to stay afloat but for the fact that if they do

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WARN that they may not get that particular capital, and it's so low at 25 that this could really affect adversely a lot of businesses. There's also what is called an unforeseeable business circumstance which is another federal act. It doesn't appear in the bill. But the thresholds are such that the question becomes how do you comply with this and then you get to the point where you may have to comply with the feds, already giving notice of this. How does that mesh with the feds and particularly when you have different information and different parties to contact? [LB472]

SENATOR LATHROP: I'm sure Senator Karpisek would be happy to work with you on that... [LB472]

RON SEDLACEK: Might have to. [LB472]

SENATOR LATHROP: ...and this committee. [LB472]

RON SEDLACEK: Thank you, sir. [LB472]

SENATOR LATHROP: Yeah. And we appreciate your concerns and the concerns of the Chamber of Commerce, particularly when we're trying to take something that's regulated in the federal arena and tweak it in the state with state law. So thanks, Ron. [LB472]

RON SEDLACEK: Thank you, Senator. [LB472]

SENATOR LATHROP: Oh, Ron. [LB472]

SENATOR CARLSON: Ron. [LB472]

SENATOR LATHROP: We got a question for you. Senator Carlson has a question for you. [LB472]

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SENATOR CARLSON: Thank you, Senator Lathrop. I think this is important enough that I have to ask it. Just on the surface, it looks to me, and I'm glad Senator Karpisek is listening, it looks to me like there could be an unintended consequence to something like this and that would be if...except in the cases of where he mentioned somebody is really planning a business phaseout but they try to make it look like it isn't, that's a different thing. But I've been acquainted with a business that was not trying to phase out and they're running into financial difficulties. And if they have to give a 60-day notice, they may let people go quicker than they ordinarily would because they can't afford to get into a spot where it's almost like the bottom drops out. And I just did a little figuring here: 25 employees at \$4,000 a month, that's \$100,000 a month. And you got to give 60 days; that's \$200,000 on the risk that maybe they don't have to do that if they didn't have to contend with this law. [LB472]

RON SEDLACEK: Uh-huh. The other thing is...that's different in this law is that the federal law does not count any employee that works less than 20 hours. This includes every employee. So even part-time workers, if you were to phase them out, you could be subject to this particular... [LB472]

SENATOR CARLSON: So do you agree there could be an unintended consequence? [LB472]

RON SEDLACEK: I don't know whether it was intentional or unintended. I don't know the intent of the drafters. But there is a consequence, yes. [LB472]

SENATOR CARLSON: Okay. Thank you. [LB472]

RON SEDLACEK: Yes, sir. [LB472]

ROBERT HALLSTROM: Senator Cook, members of the committee, my name is Robert

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J. Hallstrom. I appear before you today as registered lobbyist for the National Federation of Independent Business in opposition to LB472. I believe the materials that Mr. Sedlacek has handed out will serve the committee well in terms of the background. If this was an issue of complying with federal law to put something on the state books, might be one question, but there are significant adverse changes for small employers in this bill and we are opposed. [LB472]

SENATOR COOK: Thank you, Mr. Hallstrom. Are there questions from the committee? [LB472]

ROBERT HALLSTROM: Thank you. [LB472]

SENATOR COOK: Next testifier, please. [LB472]

CURT SMITH: Good afternoon, Senator Lathrop, members of the committee. My name is Curtis Smith. I'm the executive director of the Nebraska Chamber, Associated General Contractors. I'm here in opposition to LB472. I understand the basic intent of the law but I think the cast of the law has kind of caught some perhaps unawares. The seasonal nature of construction in Nebraska I think might be drastically affected, might affect the contractors in the state. The winter shutdown in Nebraska could start as early as October, mid-October, start up again in March. These are seasonal employees, often could be affected by laying off more people, when you don't know when that time is coming, based on weather. In fact, weather shutdown in Nebraska by spec is...by specification is November 1 unless you use...have special permission to continue the job, sometimes work until the end of the year though. But regardless, it would be very easy to get caught in this 60-day notice, not knowing when the layoff is going to come, and get hooked into perhaps a legal setting that you really were not aware of and really couldn't contend with. I talked to Senator Karpisek's office and there is a feeling that page 9, Section 7 may address the seasonable nature of the law, but if I read it I don't really think it does because some of these jobs, Interstate 80 could be a good cause

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with a job that starts one year, it may go through two years, and over and over and over, start again. I'm out of here but you kind of understand the nature. (Laugh) [LB472]

SENATOR COOK: Uh-huh. Uh-huh. [LB472]

CURT SMITH: And thank you. If you have any questions, I'd try to answer them. [LB472]

SENATOR COOK: Thank you. [LB472]

SENATOR LATHROP: Yeah, Senator Wallman. [LB472]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yes, Mr. Smith,... [LB472]

CURT SMITH: Yes. [LB472]

SENATOR WALLMAN: ...I can understand where general contractors would have a concern. But these organizations that get, you know, economic dollars from the state to this and move out, I think maybe, you know, that bothers people. They don't give notice. And you're not going to deal with that as a contractor. [LB472]

CURT SMITH: No, we're not, but we're still subject to the law. Somebody suing the contractor on behalf of...or an employee doing that, at least starting the lawsuit, whether liable or not, you're going to get caught and then you got to hire another attorney to defend you. I'm not sure how you could amend it, but there might be a way to eliminate that possibility. [LB472]

SENATOR WALLMAN: Thank you. [LB472]

CURT SMITH: Thank you. [LB472]



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SENATOR COOK: Next testifier, please. Seeing none, no more in opposition, any neutral testimony? Seeing none, Senator Karpisek, would you care to close? [LB472]

SENATOR KARPISEK: Very quickly, thank you, Senator Cook. I do realize that there is maybe an issue about seasonal here and we think that it's covered. If that isn't okay the way it is, we are more than happy to look at that. I think the bigger issue is probably the number of 25 people that...being even part time, that can get fairly small. Again, we can...we would be willing to talk about those issues. And I apologize, I forgot to mention those when I opened because I know that we have to...we're all in a hurry to get out of here. But Senator Wallman hit it exactly right. When we're just trying to do something with these companies that have maybe taken state dollars and...or even not but maybe communities have put a lot of money into it, in DeWitt, in my district, they've spent about \$1.5 million, maybe \$2 million on a new water source for Vise-Grips. What happens? They pick up and they move to China. Now how does that small community of 500 or 600 people pay for that? Those sort of issues are what this bill is about. I realize maybe it's casting a little bit wide of a net, but it may not either if they clean out one whole line in an assembly plant. So I'd be more than happy to work with the committee if we could come up with some sort of language to look at, but that is what's driving the bill. And I'd be happy to answer any other questions if there are any. [LB472]

SENATOR COOK: I don't see any. Thank you very much, Senator Karpisek. [LB472]

SENATOR KARPISEK: Thank you. [LB472]

SENATOR COOK: With that, we'll close today's hearings. Thank you, all, for participating. (See also Exhibits 23 and 25) [LB472]